

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

JEANNE HICKS, Clerk
BY B. C. Chamberlain
Deputy

THE STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) No. CR 2008-1339
)
STEVEN CARROLL DEMOCKER,)
)
Defendant.)
_____)

BEFORE: THE HONORABLE THOMAS B. LINDBERG
JUDGE OF THE SUPERIOR COURT
DIVISION SIX
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
TUESDAY, JUNE 8, 2010
8:34 A.M. - 4:53 P.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

ROXANNE E. TARN, CR
Certified Court Reporter
Certificate No. 50808

INDEX**PROCEEDINGS****PAGE**

PRETRIAL HEARING

4

TESTIMONY**PAGE****RUTH ANN KENNEDY**

Direct examination by Mr. Butner

41

Cross-examination by Mr. Sears

58

Redirect examination by Mr. Butner

78

Questions by the Jury

80

JACOB EDWARD JANUSEK

Direct examination by Mr. Butner

82

Cross-examination by Mr. Sears

160

Redirect examination by Mr. Butner

234

Questions by the Jury

249

Follow-up questions by Mr. Butner

252

Follow-up questions by Mr. Sears

253

APPEARANCES

1

2

3

On Behalf of the State:

4

Mr. Joseph Butner and Mr. Jeffrey Paupore
Yavapai County Attorney's Office

5

6

7

On Behalf of the Defendant:

8

Mr. John Sears
P.O. Box 4080
Prescott, AZ 86302

9

10

Mr. Larry Hammond and Ms. Anne Chapman
Osborn Maledon, P.A.
2929 North Central Ave., 21st Floor
Phoenix, AZ 85012

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 THE COURT: Record reflects the prosecution,
2 Mr. Butner and Mr. Paupore; Mr. Hammond, Mr. Sears,
3 Ms. Chapman, and the defendant is present.

4 We are meeting outside the presence of
5 the jury a little bit early on a couple of issues that, at
6 least, the Court has, and maybe you have some other issues.
7 First matter of concern for me is it was brought to the
8 Court's attention yesterday that Juror No. 11 had been
9 arrested and was in custody of the Yavapai County Sheriff's
10 office on a charge out of Cottonwood Municipal Court.
11 Apparently was arrested fairly late, as far as getting the
12 initial appearance done yesterday, and I was advised that he
13 has not had his initial appearance. That was being done this
14 morning. So Juror No. 11, I expect you will not see today.
15 So we are down to 17, I think.

16 Do you want to make any kind of record,
17 either side?

18 Mr. Butner.

19 MR. BUTNER: I think the e-mail that I got
20 indicated that he was arrested on domestic violence charges,
21 alleged assault per domestic violence.

22 THE COURT: Presumably by Cottonwood P.D., but
23 still he would be in the Sheriff's facility at Camp Verde.

24 MR. BUTNER: I think given the nature of the
25 charges and the timing of the arrest that it be appropriate

1 that he be excused as a juror at this time.

2 THE COURT: As opposed to delaying the trial?

3 MR. BUTNER: Exactly.

4 THE COURT: I tend to agree with that.

5 Mr. Sears.

6 MR. SEARS: Are we certain that he is in
7 custody as we speak? Do you have a jail list?

8 THE COURT: I can probably bring that up. I
9 am not sure I can bring that up in here. I can bring that up
10 in my chambers. Bear with me for a second.

11 (Brief pause.)

12 THE COURT: The Yavapai County Superior Court
13 has access to the Sheriff's detention list, and I checked the
14 list, and yes, he is in custody still as of this morning.

15 MR. SEARS: The indication we had was that his
16 initial was perhaps at 8:30 this morning. Does Cottonwood
17 Municipal Court do their own initials at the jail?

18 THE COURT: In terms of physically going
19 there?

20 MR. SEARS: I don't know how they do that.

21 THE COURT: I believe they are by video, like
22 most of the rest of the county courts are by video.

23 MR. SEARS: If he were seen at 8:30, we might
24 be able to call over and see what his release conditions are.
25 If he was released, it is conceivable he might be a bit late.

1 THE COURT: Bit late meaning 9:30 or ten
2 o'clock?

3 MR. SEARS: Possibly. We don't necessarily
4 think there is anything automatically disqualifying about the
5 fact he was arrested or the nature of the charges. I think
6 we would have to hear from him about whether this would be a
7 significant distraction in his life that would prevent him
8 from paying attention in trial.

9 Our concern is if we lose a juror per
10 week, one can simply do the math and see that we will not be
11 able to complete this trial. Our thought is, even if it
12 results in a slight up-front delay, making absolutely sure
13 that this juror can't serve before we excuse him might not be
14 a bad idea.

15 THE COURT: All right.

16 The second matter that I have and
17 provided to you folks, was Margaret had received some contact
18 from somebody in Human Resources at Poco Diablo Resort
19 regarding Juror No. 8, and explained to them that there was a
20 lengthy trial fund that might meet some of the concerns.
21 They sent me a letter that, I think, we received yesterday.

22 Did they forward you a copy of that
23 letter?

24 MR. SEARS: Yes, Your Honor, just this
25 morning.

1 THE COURT: And Mr. Butner?

2 MR. BUTNER: I have it, Judge. Thank you.

3 THE COURT: I don't know that it changes
4 anything as far as the Court's concerned. I think the
5 response by the jury commissioner was appropriate.

6 I didn't know if you wanted to make any
7 further record.

8 MR. BUTNER: I don't think I need to at this
9 time, Judge.

10 THE COURT: Mr. Sears.

11 MR. SEARS: Your Honor, I recall Mr. Lopez
12 talking again with us last week when you did some additional
13 voir dire about some hardship issues. I thought we concluded
14 at the end of that that he had not created a substantial
15 ground to be excused on that basis, nor did I hear him really
16 say that he was asking to be excused. I think he was just
17 providing us with that information.

18 He also wanted to go to Mexico to be with
19 his mother after she had some eye surgery, and it is pretty
20 obvious that the Court didn't consider that a sufficient
21 basis to excuse him for hardship in this case.

22 Losing two jurors a week, by my rough
23 calculation, would cut in half the time it would take for us
24 to be in trouble in this trial.

25 THE COURT: We only have 17 days left of the

1 34. It's not that bad, in my opinion.

2 MR. SEARS: At the break-neck pace that we are
3 proceeding at, maybe we will catch ourselves back up.

4 I don't know what to say about Mr. Lopez
5 and this, but it seems now to add another layer of concern
6 beyond his own personal hardship. I am seeing some
7 suggestion from his employer that it is a hardship for them,
8 which was not my understanding from the original voir dire or
9 his questionnaire or his follow-up voir dire. I got a
10 slightly different impression that while his absence would be
11 missed, he was not irreplaceable.

12 If the Court wants to discuss this with
13 him further, I just think we need to be very cautious about
14 excusing jurors. It is not as if we have an inexhaustible
15 pool of alternates.

16 THE COURT: Well, I don't particularly intend
17 to question him further, and I think as regards his personal
18 situation, the lengthy trial fund applications were passed
19 out to the jurors today to apply for compensation.

20 The third matter I wanted to discuss with
21 you was what I just provided to you, a jury question that
22 came in this morning. It says, "I have the following
23 concerns: No. 1, is it okay for us to bring cookies, donuts
24 and treats to share among all of us? Secondly, is it okay
25 for us to get each others names, phone numbers and addresses

1 for the intention of carpooling? No. 3, due to the" -- says
2 "longevity," but I think it means length of the trial, "and
3 for us to remain as an impartial juror, is there a
4 prohibition for jurors to become too personal with each
5 other, i.e. lunches, etc.?" It says, "in connection with
6 that, in my opinion it appears that we are all adhering to
7 the Court's admonitions in the jury room." And No. 4, it
8 says, "my only concern is that a couple of jurors
9 consistently make negative comments about the possible length
10 of this trial, especially when all the jurors were informed
11 about the length of the trial being two to three months. I
12 feel that this is causing a distraction with me and maybe
13 other jurors in the fact that they are inadvertently
14 influencing us to possibly rush a decision toward the end of
15 the trial. This distraction is taking place in the courtroom
16 while the judge and attorneys are meeting in the judge's
17 chambers. Thank you for your time. If the Court requested,
18 I will provide my juror number and name."

19 I wouldn't request it. How do you wish
20 me to respond to this?

21 MR. SEARS: Your Honor, this is really
22 concerning.

23 THE COURT: The cookies or the rest of it?

24 MR. SEARS: It is not clear when she says
25 "among all of us" exactly who she is talking about, who is

1 going to get the donuts.

2 THE COURT: All of us meaning the jury I'm
3 sure.

4 MR. SEARS: I am afraid you're right.
5 Seriously, Judge, in the past, historically jurors were
6 admonished not to talk about the case, even in the jury room.
7 They were supposed to wait for deliberations. We created
8 this artifice that jurors would go back and just sit there
9 and stare at each other and not talk about it. I think we
10 moved past that, but I do think there is a concern about --
11 it is sort of like a violation of the open meeting law, if
12 you are talking about getting together for lunch, not on
13 court days, or breaking off in groups, it encourages rather
14 than discourages premature deliberations and discussions
15 about the case. That was one concern.

16 The second concern was something I was
17 going to ask the Court to look at today, which was we took a
18 couple of lengthy side bars that wound up disappearing back
19 into your office. We were gone for a while. And I realized,
20 after the rest of my team told me, that that left Ms. Dean
21 Warnett on the stand in the courtroom, unmonitored with
22 Mr. DeMocker here, and the jury watching carefully this
23 interchange.

24 And I thought one way to solve that, if
25 we knew we were going to be more than a second, perhaps ask

1 the witness to step down, so we didn't have the dynamics
2 there.

3 And then I read this, and it is talking
4 about jurors getting cranky about the delay already from side
5 bars, and I don't think the side bars were excessively long.
6 We have all been in trials where the jury is sent out, and
7 there is a two-hour evidentiary hearing right in the middle
8 of the trial, and they are sitting in the jury room. We
9 haven't even approached that, but they are already
10 distracted. And so the empty courtroom is a potentially
11 risky place in terms of what can happen. It encourages them
12 to talk among themselves.

13 I don't know what to do. I am really
14 concerned about these items, and I am really concerned about
15 the fact that this juror has already seen a problem.

16 MR. HAMMOND: Your Honor, could I address the
17 carpooling issue for just a moment?

18 THE COURT: Yes, Mr. Hammond.

19 MR. HAMMOND: I told my colleagues last night
20 that I am burdened with the horrible experience of at one
21 time I tried what was the longest death penalty jury trial in
22 Arizona, and it ended in a hung jury after --

23 THE COURT: Which one was that?

24 MR. HAMMOND: John Henry Knapp, and Judge
25 Martone was the judge. It went for six months. Ended in an

1 evenly split hung jury.

2 In talking to jurors after that trial, we
3 found that jurors from around the valley did begin carpooling
4 relatively early in the trial, and the jurors -- several of
5 them said without any thought that they had done anything
6 wrong, that they didn't talk about the case when they
7 carpooled, but they talked about each other, and they felt
8 there was nothing wrong with that.

9 What happened is that people began to
10 develop real animus toward people who were not in their
11 particular carpool. I threatened to write an article about
12 it at the time, but I thought too few people would be
13 interested in it. It is hard not to allow carpooling. It
14 would be unAmerican, but I think some admonition --

15 THE COURT: Given the distances here compared
16 to the valley.

17 MR. HAMMOND: -- but I do think if that is
18 going to be permitted, some admonition needs to be added that
19 not only are they not to talk about the case, but about their
20 personal feelings about each other --

21 THE COURT: I agree with that. And other
22 jurors.

23 With regard to the other issue, my JA
24 indicates that she did call Cottonwood already to determine
25 if he had been seen yet. They indicated they will call back

1 after he has been seen. She hasn't received a call back yet.
2 It is ten to 9:00.

3 All right. So, Mr. Butner, anybody on
4 your side have observations about the juror question?

5 MR. BUTNER: We don't have any objection to
6 cookies, donuts and treats.

7 THE COURT: You would like to be part of who
8 they are sharing it with, also.

9 MR. BUTNER: We understand we will miss out on
10 that.

11 In terms of carpooling, we don't have an
12 objection to that, but it would be a good idea, I think, that
13 they be specially admonished about that, and it might be a
14 good idea if we found out who did have an intention on doing
15 that, too, in terms of carpooling and maybe --

16 THE COURT: You want them to identify who is
17 carpooling with whom?

18 MR. BUTNER: I don't know. It is a strange
19 situation, but they do need to be admonished about it in
20 terms of talking about the case and so forth, I think.

21 MR. SEARS: Your Honor, could I inquire what
22 your thoughts are about trying to discourage jurors from
23 deliberating early, and the things that are, at least in our
24 minds, about the ways to try and address that. We are
25 certainly open for suggestions. We don't possess all the

1 answers on that point.

2 This is just a concern in a long trial
3 like this if they start -- this is just a discouraging memo
4 about a number of points, but one that probably is the most
5 crucial, at least in my mind, is that if they are starting to
6 square off into voting blocks and groups that are at odds
7 with each other, it encourages premature consideration of the
8 evidence in the case and judging the case before all of the
9 evidence is concluded. Very dangerous.

10 THE COURT: The Court's admonition already
11 was -- and at least in this particular juror's opinion,
12 everyone is adhering to it, is to not discuss the case with
13 each other.

14 I don't have a problem if somebody wants
15 to make cookies or buy cookies or donuts and bring them in
16 and have that to share. I advise all of you that I commonly
17 will send in things myself that my wife has made to various
18 jurors over the years, juries over the years. She has made
19 pumpkin bread and stuff, and dish it in to the jurors on
20 occasion in other cases. Hasn't done that in this case.
21 Along with coffee, I did throw some commercial biscotti in
22 there last week. And since they are individually wrapped, I
23 think it is probably safer from any liability standpoint for
24 the Court. You know, trying to make this a more pleasant
25 experience than not. They are clear that it comes from the

1 Court and not from either side and shouldn't take sides. I
2 didn't receive clearance from you all to do that, and didn't
3 think I needed to receive clearance from you all to do that.
4 But commonly, a lot of juries will have one or two bakers on
5 them that will bring in cookies or something, and I don't see
6 a particular problem with that.

7 It does bother me when they start
8 exchanging phone numbers and addresses, in particular this
9 early. It is frequent, in my experience, that they exchange
10 their addresses and phone numbers at the end of their service
11 when they are breaking up, having made the decision, because
12 especially with a lengthy trial such as this, they will form
13 acquaintanceships that they may want to carry on.

14 I don't have a particular issue with
15 carpooling, but it immediately struck me, the same as it did
16 you, that that needs a particular admonition about not
17 discussing the case on the ride over -- and it is hard. I
18 think it becomes hard when this is what your life is for
19 eight hours a day, five days a week, and that is the common
20 experience between the two, to start talking about
21 Mr. Hammond's ties or Mr. Butner's jacket or a witness's
22 such-and-such, and they can't do that. I don't think that
23 they should even be -- and I think the admonition says that.
24 They should not be discussing the lawyers, the witnesses, the
25 case in any aspect. So it needs a particular admonition, and

1 it becomes dangerous, in my opinion, to do that, but I don't
2 know that it is so dangerous that it needs a bar. It needs a
3 particular admonition that they not discuss each other, the
4 persons involved in the trial, and does have a connotation to
5 it of starting to set up voting blocks. If you are riding
6 with Joe Dokes every day, you are more likely to listen to
7 what Joe Dokes has to say than Mary Smith, with whom you are
8 not riding. I think that just increases a familiarity, and
9 that is, I think, what the juror himself or herself is
10 observing, jurors becoming too personal with each other. So
11 the concern is even apparent to the author of this particular
12 jury question.

13 And similarly, the negative comments
14 start, at least it seems to me, whether conscious or not,
15 some area for comment or expression of feeling that Juror
16 No. 12 is always grouching about the length of the trial and
17 such, if not a conscious early decision, enhancer for a quick
18 or early decision to get the heck out of here. There may be
19 some subconscious tendency toward that.

20 So, if they are -- I think my comment on
21 No. 4 and my admonition on No. 4 would be: Stop talking
22 about the trial and the length of the trial. We told them
23 they could -- I told them they could, under the admonition,
24 talk to their employers and spouses and others about the
25 length of the trial, the anticipated length of the trial, for

1 purposes of their continued employment and things like that,
2 and other things going on in their lives. But I think I
3 should caution them about making negative comments to each
4 other about the length of the trial.

5 Your thoughts on responding to the whole
6 thing or to No. 4, in particular?

7 MR. SEARS: Judge, I think this message needs
8 to be part of the record; if it is not, I would ask that it
9 be.

10 THE COURT: It is. It is a jury question,
11 just like all the other jury questions.

12 MR. SEARS: The other thing is I thought maybe
13 this would be a point where you could talk informally with
14 the jury when they come in, but on the record, and talk with
15 them about some of these concerns in a non-accusatory way.
16 Just say, this is a long trial. Here are the reasons for
17 this. The principle guiding factor is that all of you have
18 been told to wait until all of the evidence is in to begin
19 deliberating the case. Everyone is concerned that you do
20 that.

21 It was pointed out to me that when we
22 were filing back for one of the side bars on Friday, a juror,
23 I don't know who it was, said audibly so we could hear on
24 this side of the room, "oh, no."

25 THE COURT: On what? What was the context?

1 MR. SEARS: We were going back for a side bar,
2 and it dawned on some juror that there was going to be
3 another delay in the trial, and a juror said, "oh, no," so it
4 could be heard on this side of the room. That is just a
5 reminder that they do it, and it makes me think that if we
6 know we are going to be more than a minute or two, sending
7 the jury out, having the witness step down, I think are all
8 smart things.

9 Maybe you could include in your
10 discussion with the jury, that there are a number of legal
11 matters, and just by the nature of this courtroom, they can't
12 be conducted in here. It has to be done -- it takes a minute
13 to assemble sometimes. Those have to be on the record, and
14 the court reporter has to pick up her machine and come
15 around. There is going to be a little bit of a delay. We
16 will do everything we possibly can to minimize those, but
17 that is just something that happens in trials, and you are
18 not to be concerned about it. We will try and spend as much
19 time presenting evidence as possible, but that can't always
20 be.

21 These are just attitudes. I mean, you
22 have a couple of days of testimony, and it is disheartening
23 that they would be this impatient this early.

24 No. 4, Your Honor, I just think perhaps a
25 way to deal with this would be for the Court to have --

1 rather than reading an admonition from the RAJI or someplace
2 else, just have a little impromptu speech to with the jury
3 about why these things -- how they happen and why it is very
4 important for them not to do these things, and everyone
5 understands that they will make friends during the trial,
6 they will do these things, but they are a jury. This is not
7 a coffee club. This is a jury, and they have
8 responsibilities as jurors.

9 THE COURT: Anything else, Mr. Butner?

10 MR. BUTNER: No.

11 MR. HAMMOND: Judge, I don't know if this
12 would be helpful to tell the jurors this, but as I think the
13 lawyers who have been around here for more than 20 years will
14 remember, this was a huge issue about 20 years ago, and a
15 committee was formed that Judge Dan chaired to reconsider
16 being a more jury friendly state. We went through that whole
17 process of jury innovation, and that is where the notetaking
18 came from. We changed the rule on the civil side, so that
19 jurors could communicate to each other pre-deliberation. I
20 think that is now the statewide rule in civil cases.

21 THE COURT: It is.

22 MR. HAMMOND: But there was -- the one issue
23 that caused the most concern was this issue of
24 pre-deliberation, deliberations in criminal cases, and a lot
25 of surveying was done by Mike Dan and other people, and I

1 think it was a very broad consensus of prosecutors, defense
2 lawyers and judges, all of whom agreed that deliberations,
3 pre-deliberation was a bad thing and particularly --

4 THE COURT: That is my recollection, as well.

5 MR. HAMMOND: -- and particularly in long
6 trials. So it is not just a rule. It is something that got
7 a lot of thought and attention, and people understood that it
8 is hard for jurors in long trials, but I think that the
9 really broad consensus was that it is essential, and
10 particularly, to be honest about it, from a defendant's
11 standpoint where the prosecution has already put on its case
12 before you get a chance sometimes to tell your side of the
13 story, that it was producing this schisms in juries that you
14 couldn't fix later.

15 That part of it I don't think you ought
16 to tell them, but it does seem to be somehow helpful for
17 people to know that this issue is one that Arizona has given
18 a lot of thought to.

19 THE COURT: All right.

20 I did get information back from my JA,
21 along with -- I think they gave you a copy of the Court's
22 order out of Cottonwood Municipal Court relating to Juror No.
23 11. Apparently there is an appearance required on June 30th,
24 a Wednesday trial date at 9:00 a.m. for pretrial conference.
25 No. 11 was released on own recognizance. According to the

1 call to the jail, No. 11 should be out of their custody in 10
2 or 15 minutes. I suppose I need to see if I can get a
3 message to give him some direction as to whether or not to
4 show up here.

5 We have one other juror that is running a
6 bit late and called in, as well. So not all are currently
7 present.

8 Given the new information as regards
9 Juror No. 11, any change in position or information that you
10 want to give me from the State's perspective?

11 MR. BUTNER: Judge, again, I guess, basically,
12 we don't have any objection that he be released. He was the
13 gentleman, if the Court will recall, had significant
14 transportation issues at the outset, difficulty getting here.
15 We postponed him, I think, a couple of times before he
16 finally made it in, and then we have this and, of course, his
17 court date coming up for him is a trial day for us.

18 THE COURT: Mr. Sears.

19 MR. SEARS: Actually, I think when Mr. Frieday
20 finally came and talked with us, he said that the
21 transportation problem was simply a matter of waiting for a
22 part to appear, and as soon as the part got here, his car was
23 fixed, and that was not a big problem.

24 I don't know anything about domestic
25 violence misdemeanors in Cottonwood Municipal Court. I,

1 frankly, had forgotten there was a Cottonwood Municipal Court
2 until this case happened. I don't know who the town
3 prosecutor is. I don't know if they routinely divert these
4 offenses. I don't know whether this could be resolved before
5 he has to appear on June 30th with an understanding that his
6 charges could be diverted. I don't know if they are going to
7 appoint counsel for him. There is a lot of things I don't
8 know about yet in this case.

9 What I do remember is that oftentimes in
10 these kinds of cases there can be a change of heart on the
11 part of the victim and often these cases take a different
12 turn sometimes when the victim realizes how much trouble the
13 defendant is in, and you just don't know. I think assuming
14 that he is going to have to be in court at nine o'clock on
15 June 30th, you can assume that from the record, but it seems
16 like there are a lot of things that could happen between now
17 and then that might cause that to change. I would still like
18 to hear from him.

19 If the Court wants to -- rather than have
20 him come over and delay the jury, if the Court wants to try
21 and reach him by telephone, maybe we could have him on the
22 phone in the courtroom and make a record. I am just really
23 uncomfortable with excusing him without knowing a bit more
24 about what this all means.

25 Does anyone know who the Cottonwood town

1 prosecutor is?

2 MR. BUTNER: I don't know who is doing that
3 now.

4 MR. PAUPORE: It was private contractor.

5 MR. BUTNER: Right. It was a contract matter,
6 and I think they have changed it fairly recently.

7 THE COURT: I don't have any knowledge about
8 that.

9 MR. SEARS: I don't know about standard
10 practices in dealing with these kinds of cases.

11 THE COURT: I note the judge did what they do
12 fairly commonly, and this indicates no contact with,
13 apparently, the listed victim, and also not to return to the
14 particular address. That may be his particular address.

15 And it is ten after 9:00. He can't
16 possibly be here until ten o'clock at the very earliest, even
17 if he is in his car right now, which I imagine he is not.

18 I think I will go ahead and excuse him.
19 Do you want me to show any objection, Mr. Sears?

20 MR. SEARS: Yes, Your Honor.

21 THE COURT: What is your suggestion as
22 alternative to excusing him? Delaying the trial for another
23 hour and a half?

24 MR. SEARS: No, sir. Try to find a way to
25 reach him by phone, to see if the jury commissioner has a

1 cell phone for him, or call the jail to see when he is
2 released and see if they can get a message to him to call a
3 particular number and have him call here.

4 THE COURT: Can you have Robin call and see if
5 he is still at the jail. If he is at the jail, whether or
6 not they could put him on the phone.

7 THE BAILIFF: Okay.

8 THE COURT: Anything else that you want to say
9 about the jury question?

10 MR. SEARS: No, Your Honor. Just I think our
11 suggestion would be that you take this opportunity to address
12 the jury on these kinds of topics. I would like to nip it in
13 the bud.

14 THE COURT: Is your side adamantly opposed to
15 anybody carpooling?

16 MR. SEARS: No. I think Mr. Hammond is right.
17 I think there is something inherently, in a time of energy
18 shortage, unAmerican about it, but it needs to be explained
19 to them what the concerns are.

20 THE COURT: Does your side need any
21 information of who is carpooling with whom?

22 MR. SEARS: No.

23 THE COURT: Go ahead.

24 MR. SEARS: I was just saying, I think if the
25 discussion could center on the concerns. The concerns have

1 been around for a very long time about jurors pairing up and
2 talking about the case and/or the personalities of the
3 players in the case, including other jurors or anything of
4 the sort, particularly outside the jury room in small groups,
5 is just the potential for a problem downstream seems to
6 increase, you would think, and I heard that in the Court's
7 comments just now, too, and that those are the reasons, and
8 we are not suggesting they have to be unfriendly and cold
9 towards each other, but they just have to understand the
10 relationship between the service as jurors and the things
11 that they want to do. I had a jury make a quilt one time.

12 Ms. Chapman had an excellent suggestion.
13 If we do go ahead and excuse Mr. Frieday, what would the
14 Court say to the other jurors about him?

15 THE COURT: That one juror has become
16 unavailable, and you are now 17 in number.

17 MR. SEARS: Did you want to speak with
18 Mr. Lopez anymore about his matter?

19 THE COURT: I don't.

20 It is 15 minutes before he will be
21 available to a phone, according to information from the jail.
22 He is not out of custody yet, even though he has been
23 released on his own recognizance. This is referring to Juror
24 No. 11. He has been released on his own recognizance, but
25 they think it is going to take another 10 to 15 to even

1 process him to a point where they can put him on the phone.

2 I think I will go ahead and excuse Juror
3 No. 11 without waiting for a phone call. Direct the JA to
4 call the Sheriff's office detention staff and have them
5 indicate to Mr. Frieday that he has been excused from further
6 jury service in the case. He is not to come over and appear
7 in court.

8 You ready to go, otherwise?

9 MR. SEARS: I have one additional matter.

10 THE COURT: Okay. Mr. Sears.

11 MR. SEARS: Your Honor, after Friday's
12 proceedings, and particularly thinking about the questions
13 that several jurors posed that seemed to indicate that they
14 have questions or concerns about the living arrangements for
15 Charlotte, and our concerns about what they thought or didn't
16 think about Mr. DeMocker's custody status, we have revisited
17 that in considerable detail over the weekend, and we now
18 think that it would be appropriate for the jury to understand
19 that Mr. DeMocker is in custody, notwithstanding our previous
20 insistence that that fact be kept from the jury.

21 We took great stock of the Court's
22 comments that the jurors are not foolish, and they would make
23 a lot of assumptions about uniformed deputies and these kinds
24 of things, but what really concerned us was the unnatural
25 flow -- it has to do with the scene where Ms. Dean Warnett

1 was on the stand. Mr. DeMocker was here. We were all out of
2 the courtroom, and the jury was here and just the atmosphere
3 to that, and the fact that other people would hug Charlotte,
4 I would go back and hug Charlotte and Katie. Mr. DeMocker
5 didn't even turn around.

6 We are very concerned that the jury would
7 think that he is estranged from his daughters or something
8 else has happened. So in consideration of those things, we
9 want now the jury to understand what's happened.

10 THE COURT: Do you want me to be the one to
11 explain that to them.

12 MR. SEARS: I do, Your Honor. I prepared,
13 overnight, a very short statement. If we could have a minute
14 to print it out, we could give it to you and the State to
15 look at. I think it is very factual and accurate and covers
16 a couple of the circumstances. But it also covers, as you
17 will see, the fact that there is a state law that prohibits
18 contact between a person in custody and others, who are not
19 on the defense team, that could even include not being able
20 to turn around and greet people or talk to people. They
21 shouldn't take that into consideration. They shouldn't
22 assume that he is guilty or something because he is in
23 custody. It will speak for itself.

24 THE COURT: Mr. Butner, without having seen
25 the particulars of it yet, what, in general, do you have to

1 say about advising the jury that the defendant is in custody
2 and to give an admonition about, obviously, he is still
3 presumed to be innocent?

4 MR. BUTNER: In general, Judge, I don't think
5 that is a problem and we don't object. We would, of course,
6 like to see whatever Mr. Sears proposes be said to the jury.

7 And also, I would like a brief break
8 before we get going with the jury, if that is at all
9 possible.

10 THE COURT: It is possible.

11 MR. BUTNER: Thank you.

12 THE COURT: I probably should advise you that
13 I did rule -- I made that ruling on the Alex Knapp matter.
14 At this point, my conclusion is that insufficient showing has
15 been made of the need for the remote examination of young
16 Mr. Knapp, but I denied the request without prejudice. Since
17 I haven't seen him and seen how he reacts, I may revisit that
18 issue if he comes up here and freezes.

19 My impression is, frankly, that it is
20 perhaps more his mother that is overly concerned than it may
21 be young Mr. Knapp, but I don't know that because I haven't
22 seen him. So given that, at this point, I am going to deny
23 the request to have the special setup in some other room, in
24 particular vis-a-vis the defendant's confrontation right, but
25 I may revisit that if it is necessary after seeing him.

1 I may allow you to have some
2 outside-the-presence-of-the-jury consideration by the Court
3 if you have him come in at a time right before he testifies,
4 and we can do an interview by the Court up here on the stand.
5 I may reconsider things at that point, depending on how he
6 progresses, and you may want to have an expert witness
7 available to take in lieu of Mr. Knapp if we would have to
8 take a break and get the other camera set up from some other
9 room, and I will defer that to a different time frame.

10 I don't know when you intend to bring him
11 in or whether you intend to bring him in, but that is my
12 conclusion at this point in time. And Robin is doing a
13 formal order that probably doesn't go to the lengths that I
14 just stated them, but I wanted you to know what my thinking
15 was.

16 The deletion of Juror No. 11 will have
17 No. 10 in the regular placement at the end and allow access
18 for the jury without having a chair in that position. So
19 everybody will bump down one.

20 MR. SEARS: When the music stops, you take
21 away one chair.

22 THE COURT: I share your concerns about the
23 number that we have concerns about already with the trial
24 only in its first infant portion.

25 MR. SEARS: Judge, I have been -- my own team

1 has had a chance to look at this. This is the first swing I
2 took at this statement, and between Mr. DeMocker and my
3 colleagues, we have actually some changes to what I have
4 proposed here.

5 In the second paragraph, the last
6 sentence, I think now would make sense to say which also
7 prevents him from speaking with or communicating with anyone
8 other than members of his defense team. I was under the
9 mistaken impression that Mr. DeMocker was not even permitted
10 to turn and look at people. I have been advised by everyone
11 that that is not true any longer.

12 THE COURT: I agree with the rest of the team
13 as to that.

14 MR. SEARS: I think if it just says prevents
15 him from speaking with or communicating with anyone other
16 than members of his defense team, I think that is accurate.

17 MR. BUTNER: I agree with the modification of
18 language that Mr. Sears has spoke about. I also point out
19 that I don't think we really even need to address the issue
20 of Mr. DeMocker wearing his own clothes in court during the
21 trial. That, obviously, states the obvious.

22 MR. SEARS: That is borne from some direct
23 experience that Mr. Hammond and I have had separately in
24 cases where jurors become fixated on an in-custody defendant
25 and what he is wearing, and we have heard in feedback from

1 trials that that became distracting to jurors.

2 It would seem unlikely, but it is
3 something that both of us independently had experience with
4 in other cases, and it would address the question of why he
5 is not in orange, and they see everyone else as they walk
6 through the courthouse in orange, and we were somehow trying
7 to manage his image or do something.

8 I had a case many, many years ago with an
9 in custody female --

10 THE COURT: How about "was permitted by the
11 Court to wear"?

12 MR. SEARS: Is permitted by the Court -- okay.

13 THE COURT: With that change, Mr. Butner, any
14 objection to those changes?

15 MR. BUTNER: Judge, I think it just draws
16 additional attention to that specific fact. I don't think it
17 is necessary. He, obviously, is going to be wearing his own
18 clothes during the trial.

19 MR. SEARS: I believe it says he is permitted
20 by the Court to wear his own clothes. It is one sentence.
21 That is our express concern, and it is borne of personal
22 experience. It just reminds Mr. Hammond and me, yet again,
23 the odd things that the jurors latch onto.

24 THE COURT: What about the rest of it,
25 Mr. Butner? Any objections?

1 MR. BUTNER: No objection.

2 THE COURT: All right. I will read the
3 amended statement then. Do you want me to show an objection
4 to that sentence?

5 MR. BUTNER: No.

6 THE COURT: All right. And I will explain
7 that it is 17 of them now and not 18.

8 All right. You wanted five minutes,
9 Mr. Butner?

10 MR. SEARS: It might be a moment longer.
11 What's happened, Your Honor, is we located an audio file,
12 short audio file of the message that Ms. Kennedy left on
13 Mr. DeMocker's home answering machine, and also a very short
14 message that her son, John Kennedy, left on Mr. DeMocker's
15 answering machine.

16 And we want to play that for the State,
17 because I think the State would want to use that in their
18 direct examination of Ms. Kennedy. We also have a very brief
19 transcript of these very short calls that probably could be
20 shown on the ELMO while the audio files are being done. We
21 have a laptop with pretty good speakers.

22 THE COURT: What should I tell the jury when
23 we are going to be ready to start? About ten minutes?

24 MR. SEARS: 15, 20.

25 THE COURT: Tell them 15 minutes. I will be

1 ready to go in 15 minutes.

2 Stand in recess.

3 (Brief recess.)

4 (Whereupon, the jury enters the courtroom.)

5 THE COURT: The record reflects the presence
6 of the defendant and the jury and the lawyers in the case.

7 It may not have been instantly detectable
8 by you in the jury room. I think when you came in the room
9 you noted that there is one less chair, and I apologize for
10 the lengthy delay that we have had this morning, but part of
11 that delay is a result of what has happened in connection
12 with one of your fellow jurors. I am not going to go into
13 what happened specifically, but there are now 17 of you, not
14 18 of you. So we are one less alternate at this point.

15 Obviously, we still will need a jury of
16 12, and you don't know who the 12 are, as I said before,
17 because the alternates are going to be drawn by a lot,
18 assuming that there are more than 12 at the close of the
19 case. So needless to say, please take care of yourself, and
20 we do need 12 of you to have a decision made in the case.

21 The fact that there is one fewer should
22 not have any part in your discussion or your deliberations in
23 the case.

24 I received from the jury a question.
25 Actually, it was a number of questions discussing a variety

1 of things, and I will go through them and give you what my
2 answers are, and I don't need to know who the juror is that
3 sent this. I will simply respond to it.

4 Question: Is it okay for us to bring
5 cookies, donuts and treats to share among all of us? And the
6 answer is yes. It is okay if you wish to bring cookies or
7 donuts or treats. I threw some biscotti in there last week
8 and today, and didn't have enough to go around to all of you,
9 but sure, it is okay to do that sort of thing. We don't
10 expect you to be anything less than human beings with
11 everything that human beings are made of, and during this
12 common experience among yourselves, sure, it is okay to do
13 things like that. You probably ought to check with each
14 other to see who is bringing something, so it all doesn't
15 come in at once and all 12 -- actually all 17 of you bring
16 something tomorrow.

17 Second part of the question was: Is it
18 okay for us to get each other's names, phone numbers and
19 addresses, for example, for the intention of carpooling?
20 Yes, it is okay to exchange names, phone numbers and
21 addresses.

22 In my experiences and the lawyers
23 experience in various cases over the years, jurors frequently
24 become acquainted with each other through the strange jury
25 process that we have, selecting people somewhat at random,

1 and it is okay to have each other's names, phone numbers and
2 addresses, and it is okay to carpool. However, in your
3 carpooling, there is a danger that if it is just two or three
4 of you traveling in the carpool, that you will speak of what
5 is you common experience, and your common experience is what
6 is going on in court.

7 I have already given you the admonition
8 that you are not supposed to be talking about what is going
9 on in court. Yes, it is okay to carpool, and it is somewhat
10 an American thing to do, but you can't discuss the case. You
11 can't discuss the lawyers, their personalities, each other's
12 personalities. The problem with pairing up or tripling up
13 for lunch or carpooling and that sort of thing is the parties
14 are entitled to your own independent judgment about what you
15 perceive is going on in the court. When you get to the
16 deliberation stage, if you are one of the 12 making the
17 decision at the close of the trial, each side is entitled to
18 your own sound, independent judgment.

19 The problem comes in this fashion, and
20 this has been discussed and spoken about by lawyers and
21 judges and jury sociologists and the like over the years,
22 people who study juries and how the jury system works, you
23 start pairing up, are you going to start affiliating with the
24 person that you ride in the carpool with or the persons that
25 you ride in the carpool with, as opposed to listening to the

1 sound opinions of the other people that are on the jury?

2 So I think you need to be conscious of
3 that, not that you won't listen to the person who you are
4 riding with or that sort of thing -- and the same is true
5 about talking with each other on the jury, your fellow
6 jurors, and starting to align in -- I don't know a better way
7 to describe it than, voting blocks. This block against that
8 block. That is the danger, and I think that danger is
9 apparent to all of you in my discussion of this with you.

10 It is a lengthy trial, and we all have
11 known that from the beginning. I would caution you about
12 talking even in the jury room about the length of the trial.
13 I said that you could discuss with your employer or your
14 spouse the length of the trial, but nothing else about the
15 case, other than the fact that you are on a jury. If you
16 start talking about the lawyers, or what tie one of them is
17 wearing or suit one of them is wearing or things about their
18 personality, you are going to be focusing on things that are
19 not relevant to the real consideration that you are going to
20 have to give to the evidence at the close of trial, the
21 evidence that is presented here in court through the
22 testimony and exhibits. So I would caution you about talking
23 about each other, about other jurors, about personalities of
24 witnesses, anything about the case at all.

25 I am sure that each of you are following

1 the admonition that I gave, but the admonition was a lengthy
2 one. If you at some point want me to go over it again, about
3 what you are supposed to do or not do, I will be happy to do
4 that, but I am not going to preclude you from riding in a
5 carpool together or having lunch together, but be conscious
6 of what I am talking about, that you need -- you are not to
7 talk about the case, and not just the testimony, but other
8 aspects of what is going on in court, the personalities of
9 the lawyers or each other, where you're starting to set
10 yourself up for some type of resolution of the case prior to
11 the point in time where it is allowed. That is after the
12 closing arguments, after the final instructions, when all of
13 the evidence is in, when the 12 who are the final jurors in
14 the case are to meet in the jury room and make a decision
15 about the case.

16 I should probably mention at this point
17 that if you are not in the final 12, you're still going to be
18 under the admonition at that point in time, because if you
19 are an alternate, there is a possibility that even after the
20 deliberation starts, if something happened to one of the 12
21 jurors, you could be called back to participate in the
22 deliberations. So you are not going to be immediately freed
23 up to go read the newspaper or go on line and talk to others
24 about the case. It isn't until the trial has concluded and
25 you are excused from further jury service that you are going

1 to be released from the admonition. As long as the jury is
2 deliberating, there is a possibility of an alternate getting
3 called back in to replace a juror.

4 So that part we understand. You are
5 human beings, but that part is difficult for human beings.
6 We are intelligent and curious creatures, and I think you
7 need to be conscious that we are here, not for a social club,
8 not for social networking. We are here for a particular
9 critical and important process of making a determination as a
10 jury about somebody's guilt or innocence, and there are
11 significant consequences to both sides, and it is a very
12 important job that you have to do, but we don't detract from
13 your nature as human beings, and I am not going to preclude
14 you from carpooling or exchanging phone numbers and
15 addresses, but I would caution you. Don't -- other than
16 making arrangements for the carpool or something, don't be
17 calling each other on the weekends, either, to set up
18 meetings.

19 Once your jury service is done, if you
20 have a continuing friendship that you have made with somebody
21 else that is on the jury, that will be fine at that point,
22 but do not talk about the case or about anyone who has
23 anything to do with it, about what is going on in the side
24 bars, don't talk about things of -- those sorts of things.

25 With regard to the side bars, we will

1 try -- I will try to minimize the number of those and the
2 length of those. I decided that it is something that I
3 somewhat need to change how we are doing. If we are going to
4 be longer delayed than just a minute or so, then I am going
5 to probably let you all take a break and let the witness step
6 down and let you go into the jury room and just take a break,
7 if it is going to be lengthier than just a minute or so.

8 So I am going to want to know from the
9 lawyers, when they come up and approach, as to the length.
10 Then I will probably just excuse you all. And because we are
11 going to do it in that fashion, I am going to try to minimize
12 the number of those and the length of those, because it is a
13 distraction to all of you.

14 I think those were the things that I
15 wanted to say in response to the question that was asked.

16 Another item I think is important to
17 discuss with you. We had a number of questions last week,
18 and the lawyers have asked me to reconsider some of the way
19 in which I responded, or in some cases did not respond to
20 questions that you wanted answered last week, and I agreed to
21 do that.

22 So there is no confusion, I am going to
23 advise you that Mr. DeMocker is currently in custody. He has
24 been so since his arrest in this case October 23rd of 2008.
25 As a result, he is under the control of the uniformed

1 deputies that you see in the court. State law prohibits
2 anyone in custody from communicating in any way with family
3 or friends in the courtroom, which also prevents with
4 Mr. DeMocker from speaking with anyone, other than members of
5 his defense team.

6 Mr. DeMocker was permitted by prior Court
7 order to wear his own clothes in court during this trial.

8 I want you to remember that Mr. DeMocker
9 is presumed innocent. You should not, you may not assume
10 that he is more likely to be guilty because he is in custody.

11 If any of you have any questions or
12 concerns about the situation, please raise your hand, and I
13 will speak with you privately about those matters right now.
14 Anybody have any problem with that issue? I don't see any
15 hands raised.

16 Anything else that either counsel think I
17 need to discuss?

18 MR. BUTNER: Nothing from the State, Judge.

19 MR. SEARS: No, Your Honor.

20 THE COURT: Then with the delay, let's proceed
21 with the trial.

22 Mr. Butner, I think we were ready for
23 another witness.

24 MR. BUTNER: Thank you.

25 I would like to call Ruth Kennedy to the

1 stand please.

2 THE CLERK: You do solemnly swear or affirm
3 under the penalty of perjury that the testimony you are about
4 to give will be the truth, the whole truth, and nothing but
5 the truth, so help you God?

6 THE WITNESS: I affirm so, so help me God.
7 Thank you.

8 THE COURT: You may proceed.

9 MR. BUTNER: Thank you.

10 RUTH ANN KENNEDY,
11 called as a witness, having been duly sworn, testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. BUTNER:

15 Q. Please state your name for the record.

16 A. Ruth Ann Kennedy.

17 Q. And in what city and state do you reside?

18 A. Nashville, Tennessee.

19 Q. How long have you lived in Nashville, Tennessee?

20 A. 85 years plus.

21 Q. In other words, your whole life?

22 A. Right.

23 Q. And you are the mother of the victim in this case?

24 A. That's true.

25 Q. What was her full name?

1 A. What was her full name?

2 Q. Right.

3 A. Virginia Carol Kennedy.

4 Q. And, of course, you called her Carol; right?

5 A. Right.

6 Q. How old was Carol when she passed away?

7 A. She was 53.

8 Q. Did you have regular contact with your daughter?

9 A. After her dad died in March of 2006, she called
10 every evening around 10:00 p.m. her time, which would have
11 been 8:00 p.m. my time, usually.

12 Q. Do you think maybe you might have just gotten that
13 backwards and around --

14 A. I was on Central Daylight Time, which would have
15 been eight o'clock here but ten o'clock in Nashville.

16 Q. Okay. That is what I thought.

17 And so were you familiar then, basically,
18 with her routine to some extent?

19 A. Yes.

20 Q. Well, did you visit with your daughter regularly?

21 A. As regularly as I could, maybe twice a year.

22 Q. And when was the last time that you were out to
23 visit her?

24 A. It was Thanksgiving of 2007.

25 Q. And how long did you visit for?

1 A. Four or five days.

2 Q. And before that, when was the last time you
3 visited her, if you can recall?

4 A. Before that? She had been to Nashville in
5 September of that year, and I had been to Thanksgiving the
6 year before, 2006.

7 Q. Okay. And you talked about your daughter calling
8 you every day about 8:00 p.m. her time, 10:00 p.m. Nashville
9 time; right?

10 A. I told her not to call past 10:00.

11 Q. I was going to say, and why was that?

12 A. Because I usually retire around 10:00.

13 Q. And did she -- were you familiar with a routine
14 that she had in her life in terms of why she would call you
15 at that specific hour?

16 A. Well, she would get home from work, maybe take a
17 run, and then come in and start fixing her dinner.

18 Q. Is that when she would call you?

19 A. Usually. Right prior to her own meal.

20 Q. And were you familiar with what she ate even?

21 A. She was -- she was a big salad eater. She
22 actually had been a vegetarian most of her life.

23 Q. So on July the 2nd of 2008, did you receive your
24 usual phone call from her?

25 A. I did.

1 Q. Do you remember what you were talking with her
2 about?

3 A. Yes, I do. It was a Wednesday, and at home at the
4 Kroger Store, we have senior day. So I was bragging a little
5 bit about the money I saved that day, and I also told her
6 that I had had a salad and she would really be proud of me
7 emulating her, and she said she was just before fixing her
8 own salad.

9 Q. So you shopped at the Kroger grocery store, is
10 that what you are telling us?

11 A. Yes.

12 Q. And senior day was a special day for what reason?

13 A. Every first Wednesday.

14 Q. And what were your benefits that you received when
15 you shopped at the Kroger the first Wednesday of the month?

16 A. As a lot of seniors do, I clip coupons, as well as
17 got a ten-percent discount.

18 Q. Do you remember how much money you saved?

19 A. That day? No, I don't.

20 Q. So you indicated that you had had a salad for
21 dinner?

22 A. That's correct.

23 Q. And she indicated that she was having one?

24 A. That's correct.

25 Q. When you were on the phone with her, could you

1 tell what she was doing?

2 A. Well, I heard water running, and I assumed she was
3 fixing her salad greens.

4 Q. And do you remember anything else that you were
5 discussing with her?

6 A. Yes. We talked about Katie having left the
7 Saturday before, and she had not been able to take all of her
8 paraphernalia, and they were going -- Carol was going to pack
9 it up, and Steve was going to ship it, and believe it or not,
10 we sat there and talked about different shipping lines, FedEx
11 and UPS. I cannot believe that I remember that, but we did.

12 Q. The various benefits of those shipping lines?

13 A. We never settled on one.

14 Q. That was the plan. She was going to ship more of
15 Katie's stuff to her?

16 A. Because at that point in time, the airlines had
17 begun charging \$50 extra for each suitcase extra.

18 Q. Okay. Do you remember anything else that you were
19 discussing with her?

20 MR. SEARS: Sorry, that calls for hearsay,
21 Your Honor.

22 THE WITNESS: Yes, I do.

23 BY MR. BUTNER:

24 Q. Please don't tell me what Carol was saying to you,
25 but rather what you were saying to her, if you can recall

1 anything else.

2 A. We discussed the fact that a payment had not been
3 made.

4 Q. That would not be a good thing?

5 A. I can't say that? That would not be a good thing?

6 Q. She said something to you, I take it?

7 A. She said --

8 THE COURT: Don't go into what was said.

9 MR. BUTNER: Okay. Thank you.

10 THE WITNESS: Okay.

11 BY MR. BUTNER:

12 Q. So you had this discussion going on with Carol,
13 and if I understood what you just told me, you had heard
14 water running?

15 A. I heard water, yes.

16 Q. And if I understood what you said, you interpreted
17 that to mean what?

18 A. Mean that she was fixing her salad greens.

19 Q. Okay. And tell us then what happened.

20 A. Well, after the conversation that I can't repeat,
21 she said a long drawn out "well," and then after that she
22 said, "Oh, no," and that's the last words that she uttered.

23 Q. And you just said that "Oh, no" a certain way with
24 a certain emphasis. Was that the way that she said it, to
25 your recollection?

1 A. She said, "Oh, no." Basically that is the way it
2 came out.

3 Q. Did she scream that?

4 A. I don't think she screamed it. She just said it.

5 Q. Okay. And then what happened after she said "Oh,
6 no"?

7 A. Well, I said into the phone, "Carol, are you all
8 right? Are you all right? What's the matter? What's the
9 matter?" No answer.

10 So I had her landline programmed into my
11 phone, so I dialed that, and it rang and rang and no answer.

12 Q. Do you know which phone -- what type of phone you
13 were speaking with her on, whether it was her landline or her
14 cell phone or something else?

15 A. I really cannot say which it was.

16 Q. But you did have the number of her landline
17 programmed into your telephone?

18 A. Yes, and I dialed it and got no answer.

19 Q. Did it ring?

20 A. It rang and rang. It rang several times, and I
21 thought -- well, by this time I am frantic, as you might
22 expect.

23 Q. You didn't get a busy signal?

24 A. No, I did not.

25 Q. All right. So what did you do after you had

1 dialed her number?

2 A. Well, I thought what can I do? Here I'm 1,800
3 miles away and something bad has happened. What can I do?
4 And so I didn't -- Katie was gone, and I didn't have a number
5 for Charlotte. So I called Steve's landline and left a
6 frantic message with him, and there is no telling what I said
7 at that point. I think I just said, "This is Ruth Kennedy
8 calling from Nashville. Something bad, I believe, has
9 happened to Carol," and then because of the fact that I
10 didn't get any answer, I just said -- I didn't say anything
11 much else, I don't think. I hung up and I dialed his cell
12 phone and basically said the same thing.

13 After that, I felt, well, there has to be
14 something I can do. And I thought, well, maybe the man down
15 in the guesthouse had a phone.

16 Q. Did you know his name?

17 A. His name was Knapp. So I called information.
18 They had no listing for him. So I thought, well, there has
19 to be something I can do. You know, I am frantic, as I am
20 right now.

21 So I decided I would call the Prescott
22 Police Department, and I got information and got that number.
23 They said it is not their jurisdiction, so they gave me the
24 Yavapai County Sheriff's number, and I called them, and I
25 spoke with someone there and relayed this whole story to

1 them, and asked them please to send someone out to Bridle
2 Path to check on my daughter, please. And they said they
3 would.

4 Q. We have a couple of recordings here that we want
5 to play for you. Did you call Steve's phone first?

6 A. I called -- yes, that was the first phone call I
7 made.

8 Q. Steve DeMocker's landline?

9 A. Landline.

10 MR. BUTNER: All right. If we could go ahead
11 and play that.

12 (Tape playing.)

13 BY MR. BUTNER:

14 Q. You just heard that recording. Do you recall
15 making that call?

16 A. Yes, that's me.

17 Q. Okay. I know this is difficult. You are reliving
18 these events; right?

19 There is a transcript of what you said up
20 behind you there. I think you can see that. You indicate in
21 that that Carol screamed "Oh, no"; right?

22 A. That's what I evidently said.

23 Q. But you described for us, basically, how she
24 screamed the "Oh, no"?

25 A. It really was not a scream. I am sure it was

1 because I was so rattled myself. She just said "Oh, no."
2 That's all she said, and basically in that tone of voice,
3 like it was more dismay than anything. It was not fear. It
4 was more dismay.

5 Q. And those are the last words that you heard from
6 your daughter?

7 A. That's right.

8 Q. And were you able to get ahold of Steve DeMocker
9 that night?

10 A. No.

11 Q. Did you ever speak with him that night?

12 A. No, I did not.

13 Q. And then you ended up calling --

14 A. After all those phone calls that I made, I called
15 my son and told him.

16 Q. Your son, John Kennedy?

17 A. My son John, and then the two of us, I guess, made
18 pests of ourselves calling Yavapai to see if they had heard
19 anything.

20 Q. And you talked with Yavapai County Sheriff's
21 office. You described that also; is that correct?

22 A. Oh, yes.

23 Q. And asked them to check on your daughter?

24 A. Yes.

25 Q. Right?

1 A. Yes.

2 MR. BUTNER: I would like to play that now,
3 too, please.

4 (Tape playing.)

5 BY MR. BUTNER:

6 Q. Do you remember that conversation?

7 A. Sure.

8 Q. Is that yes?

9 A. Yes.

10 Q. Thank you.

11 You indicated that you tried to call her
12 back, but -- let's back up just a little bit before that.

13 She, as you described it in that,
14 screamed "Oh, no." You described it in slightly a different
15 way. After she said, "Oh, no," did you hear any additional
16 noise?

17 A. I heard absolutely nothing.

18 Q. You didn't hear the phone drop or anything?

19 A. No, I did not.

20 Q. Were you aware of your daughter having any pets?

21 A. Having what?

22 Q. Pets.

23 A. Yes. Two dogs Ike and Daisy.

24 Q. Ike and Daisy?

25 A. Yes.

1 Q. What kinds of dogs are these?

2 A. Well, Ike was a pug like, and Daisy was a cute
3 little furry thing, a Shih Tzu or a Bichon or something.

4 Q. Had you been around these dogs on previous
5 occasions?

6 A. Oh, yes.

7 Q. How did these dogs react when you were around them
8 to the presence of strangers?

9 A. Well, I was never there when they would have
10 reason the react to a stranger.

11 Q. Were they barkers, I guess is what I am getting
12 at? Had you been around them --

13 A. They barked a lot with Joey when we would come in,
14 you know, and I know Ike, poor thing, he barked at the
15 Javelina.

16 Q. Okay. And did you hear any dogs barking then?

17 A. That night? I heard no dogs that night.

18 Q. In your conversation with your daughter, did you
19 have a routine in your conversation with your daughter about
20 checking on her security?

21 A. Well, I always asked if the doors were locked.
22 That was a routine. That was a ritual with us.

23 Q. For what reason did you ask if the doors were
24 locked?

25 A. Well, that house is out sort of separate, even

1 though there are neighbors, they are not close, and I worried
2 about her out there alone, and consequently I would always
3 say, "Are the doors locked?"

4 Q. And did you ask her that this evening when you
5 were talking on the phone?

6 A. The first thing she said, almost was, "Mom, the
7 dogs are fed and the doors are looked."

8 Q. So she beat you to the punch?

9 A. She beat me to it that night.

10 Q. When you had visited her on previous occasions,
11 were you concerned about her keeping the doors locked and so
12 forth while she was coming and going?

13 A. Yes. I think it is kind of an isolated place, and
14 she didn't seem to have any fear at all of it, but it seemed
15 to me like keeping your doors locked was paramount to safety.

16 Q. You indicated that you called Steven DeMocker
17 first?

18 A. Yes.

19 Q. For what reason did you call Steven DeMocker
20 first?

21 A. That was the only contact I had, the absolute only
22 contact.

23 Q. And so you sought him first because of your
24 concern about your daughter's safety?

25 A. That's right.

1 Q. Were you familiar with where your daughter fed the
2 dogs?

3 A. She usually fed them in the laundry room.

4 Q. Did you -- when was the first time you spoke with
5 Steve DeMocker about what happened to your daughter?

6 A. I think the following Tuesday. Katie had come
7 home by that time, and I was on the phone with Katie, and she
8 said, "Dad wants to speak to you."

9 Q. So did you speak with him?

10 A. And so we spoke.

11 Q. And you hadn't talked with him at all, not since
12 that night?

13 A. No.

14 Q. What did he say to you?

15 A. You know, I don't really recall too much of the
16 conversation. The thing that sticks in my mind is I said,
17 "Steve, have you told your mother about Carol?"

18 Q. What did he say?

19 A. He said, "No, I am going to." My reason for
20 asking --

21 Q. What was your reason for asking that?

22 A. -- was because Jan DeMocker was always so quick to
23 offer condolences. When my sister died suddenly, she sent
24 flowers. When my husband died, she sent flowers. I realized
25 that she must not know, because I had not heard a word from

1 her.

2 Q. And then, now this is, I guess, Tuesday. The
3 murder was on July the 2nd, a Wednesday. So Tuesday, would
4 that be July the 8th that you had that conversation?

5 A. I think so.

6 Q. Did you come out to Prescott for a memorial
7 service for your daughter?

8 A. Came later in the month. I don't remember the
9 days exactly. It was over the weekend of her birthday. I
10 know that, July 25th. They had planned a -- the church where
11 she attended was planning sort of a public memorial, and then
12 the family was planning a special memorial down at Sedona for
13 her.

14 Q. Did you go to both of those?

15 A. I didn't get here for the public one, but I
16 attended the one in Sedona.

17 Q. And who was at the -- this would be the private
18 memorial, so to speak, in Sedona?

19 A. Mostly family and really close friends.

20 Q. Approximately how many people were there?

21 A. Oh, goodness. I don't know. 35 or 40 maybe.

22 Q. And were you accompanied to the memorial service?

23 A. Yes. My son, John, and his children; John, Alvin,
24 and Rebecca.

25 Q. And did you see Steve DeMocker at the memorial

1 service?

2 A. Yes, I did.

3 Q. And did you have any conversation with Steve
4 DeMocker at the memorial service?

5 A. Not at the memorial service, no.

6 Q. He didn't say anything to you?

7 A. No.

8 Q. When was the next time that you heard from Steve
9 DeMocker?

10 A. After the memorial?

11 Q. Right.

12 A. I had a strange phone call, strange because of the
13 fact that he never called, and he was just -- I had invited
14 the girls to come to Nashville for Thanksgiving, and he had
15 some concern about was I really up to having them there.

16 Q. So he called you sometime prior to Thanksgiving of
17 2008?

18 A. Yes.

19 Q. And what did you tell him?

20 A. I told him of course I wanted them there, and of
21 course I was up to having them.

22 Q. And why do you say this was a strange phone call?

23 A. Because he never called me.

24 Q. Let me show you what has been marked as Exhibit
25 No. 2296, and then 2297.

1 MR. BUTNER: May I approach, Judge?

2 THE COURT: You may.

3 MR. BUTNER: Thank you.

4 Q. First of all, 2296, do you recognize that?

5 A. Of course.

6 Q. What is that, please?

7 A. A photograph of my daughter.

8 Q. And 2297, do you recognize this?

9 A. Yes. It is an additional photograph of my
10 daughter.

11 Q. When did you get those?

12 A. You know, I couldn't really say for sure.
13 Sometime following her death someone e-mailed me these, and I
14 printed them out, and I don't even recall who e-mailed them.
15 I'm sorry.

16 Q. Of course you recognize her, obviously?

17 A. Yes, of course.

18 MR. BUTNER: I move for the admission of 2296
19 and 2297.

20 MR. SEARS: No objection.

21 THE COURT: 2296 and 2297 are admitted.

22 BY MR. BUTNER:

23 Q. Did your daughter have any enemies?

24 A. Enemies? Not that I am aware of.

25 Q. What was she like?

1 A. She was everything a mother would want in a
2 daughter. She was a good mother. She loved teaching, and
3 she had taught --

4 Q. Where had she taught?

5 A. Well, after getting her degree, she taught Special
6 Ed for a while, and then she -- after she got her advanced
7 degree, she taught at Prescott College. She was head of the
8 psychology department there.

9 Q. Did you have any difficulties with your
10 relationship with your daughter?

11 A. None whatsoever.

12 Q. Anything special stick out in your mind that was
13 sort of a defining kind of characteristic about Carol?

14 A. She cared for people. It is just hard to define.
15 She loved her daughters, and she was just a great girl. She
16 was a good kid, a lovely woman.

17 MR. BUTNER: I don't have any further
18 questions at this time. Thank you.

19 THE COURT: Mr. Sears.

20 MR. SEARS: Thank you.

21 CROSS-EXAMINATION

22 BY MR. SEARS:

23 Q. Ms. Kennedy, we met before. I am John Sears. I
24 am one of Steve's lawyers. Can you hear me all right?

25 A. I can't hear you very well.

1 Q. Let me get a little closer. Is this better?

2 A. Yes.

3 Q. Can you hear me now? Thank you. I have got
4 hearing problems, too.

5 A. I didn't realize I had one until I got out here.

6 Q. Ms. Kennedy, I didn't know your daughter, but from
7 everything I know, she was a lovely person, and I am so very,
8 very sorry for you for what happened?

9 A. Thank you.

10 Q. All of us are. And I am sorry I have to ask you
11 questions. I would rather not.

12 A. Me, too.

13 Q. I would rather be doing something else. I am not
14 going to play you these audio recordings of your 911 calls.
15 They are upsetting. I would rather not, but we have a
16 transcript of what was said, and I am thinking about the call
17 you made to the Sheriff's office. You heard that --

18 A. Yes.

19 Q. -- here this morning, and that was upsetting. I
20 know it was.

21 The clip that was played for you here
22 ended, though, before the call was completed. And if I could
23 just take a minute and read you the next couple of questions
24 and answers from the dispatcher and you. I want you to tell
25 me if you remember this part of that conversation.

1 The clip ended with you saying, "You
2 know, I am afraid something bad's happened." That was the
3 last thing we heard here this morning. At Page 3, Counsel,
4 Page 14150, Line 12, the dispatcher says, "Do you believe
5 that there is any reason that she would be concerned if her
6 husband, ex-husband, came back?" And then you said, "Oh, I
7 don't think so." And the dispatcher said, "Okay." And then
8 you said, "No, I don't think it is that kind of thing."

9 A. I remember that.

10 Q. You remember saying that to the dispatcher, and
11 then the dispatcher goes on to say, "Okay, all right. We
12 will send somebody out to check on her and we will have them
13 give you a call," and you say, "Okay. Are you going to do it
14 right away, I hope?" The dispatcher says, "Yes, ma'am." You
15 ask her name, and then the dispatcher says to you, "If you
16 happen to get ahold of her and she is okay, could you call us
17 back and let us know." You say, "I sure will." You thank
18 each other and that was the end of the call.

19 Is that the way you remember it?

20 A. Yes.

21 Q. If I could go back a little earlier that night to
22 that call. We have lots and lots of telephone records in
23 this case that everybody has had a chance to look at and try
24 to put some times on this. Has anybody shown you any of the
25 telephone records in this case?

1 A. The telephone records, per se? No.

2 Q. And one of the things we don't have are your
3 telephone records, of course. We don't have records from
4 your telephone. So the information that we have basically
5 comes from Carol's phone records and from Steve's phone
6 records and other people's phone records out here in Arizona.
7 If you have other information that is different than that,
8 please tell me.

9 It looks like from the phone records that
10 your call with Carol was made from her landline to you, and
11 that she had a cordless phone. It was not a cell phone, but
12 it was a cordless phone, but it was connected to her
13 landline. Is that your understanding?

14 A. I know she had one that you could walk around
15 with, yes.

16 Q. She had two different ones, but she would walk
17 around with that.

18 And that the call lasted a little over 22
19 minutes, according to the billing records, the call with you
20 that Wednesday night. It ended, according to the billing
21 records, at about 7:59 p.m. on Arizona time that night, and
22 then -- I will come back and talk with you some more about
23 how that ended -- but then it looks like from the phone
24 records that you called her landline back at 8:03, about four
25 minutes later, and the information from the phone records is

1 that that call registered for five seconds. Then at 8:17,
2 you tried her again on that number, and it was another five
3 second call. And then your son John's home number in
4 Tennessee -- he lives in Nashville; right?

5 A. Yes.

6 Q. Very near to you?

7 A. About eight or nine miles away.

8 Q. And he called Carol's home at 8:40 Arizona time,
9 and that call lasted 47 seconds. It appears he left a voice
10 mail, and then at 9:27 Arizona time, you called Carol's home
11 again, and the call registered for 30 seconds, and then John
12 tried one more time at 10:03. He called Carol's home and it
13 registered for 13 seconds. These are the calls to Carol's
14 landline. Did you also try Carol's cell phone number?

15 A. No. I didn't have it in my memory.

16 Q. You mean in the phone memory?

17 A. In this memory, either. I had to go look it up if
18 I was going to call it. Since the other one was handy, that
19 is what I did.

20 Q. These calls that you and your son, John, made were
21 to the only number that you had for Carol?

22 A. No, I had her cell phone number. But, you know,
23 it never occurred to me that night. Put yourself in my
24 place, if you can. I don't know what I am doing. I am
25 trying to do something. What do you do? You are 1,800 miles

1 away. What do you do except use the phone?

2 Q. I don't know what you would do. I agree. I
3 understand.

4 A. Like I said, I had her cell phone number. It was
5 up on the cabinet door, away from the phone, but it never
6 occurred to me to call the cell phone. That is just the
7 truth of the matter. It never occurred to me.

8 Q. So the first call that you made after -- let's see
9 if we can get the sequence of events here, and let me see if
10 I understand it. You were talking to Carol just about
11 anything and everything, just your nightly call, and it went
12 on for 20-some minutes, 22 minutes, and you are talking about
13 salad, and you are talking about the \$26 you saved at
14 Kroger's? I wrote that down.

15 A. Is that what it was? Right. Good for me.

16 Q. No wonder you remembered that.

17 That is one of the ways that you
18 remembered this was a Wednesday, because Wednesday was senior
19 day at Kroger.

20 A. Yes. Well, that and the fact that something like
21 that sticks in your mind forever.

22 Q. I know.

23 A. Sticks in your mind forever.

24 Q. I understand.

25 And part of this may just be my poor

1 hearing. I wrote down today that you said, right before
2 Carol said "Oh, no," that you said that there was a long
3 drawn out, and I am not sure whether you were saying W-E-L-L
4 with a Southern accent.

5 A. That is what I said. "Well."

6 Q. I wrote down W-A-I-L.

7 A. W-A-I-L?

8 Q. Because I didn't account for the accent. I
9 thought you said wail.

10 A. No. She said a long drawn out, "well."

11 Q. Can you tell us again one last time how you
12 remember Carol saying, "Oh, no"?

13 A. She just said, "Oh, no."

14 Q. In the little bit of the 911 call to the Sheriff's
15 Department, you said -- I counted three different times that
16 Carol screamed.

17 A. That she screamed.

18 Q. That Carol screamed and said that.

19 A. Lay that down to my frantic state.

20 Q. I understand. And then on the call to Steve,
21 which you made before you called the Sheriff, you said again
22 that Carol screamed?

23 A. Yes.

24 Q. So that is four times in a short period of time.
25 I understand. I understand. I am trying to get the sequence

1 of events right.

2 From these phone records, it looks like
3 there was about four minutes or so that went by before you
4 called Carol's phone back. That was the first five-second
5 call. I think you said here today that you just heard
6 nothing. When Carol said, "Oh, no," you heard no more sound
7 from that phone.

8 A. That's correct.

9 Q. You couldn't hear any noise, banging noises,
10 clicking noises, nothing?

11 A. I heard absolutely nothing.

12 Q. How long, if you have any idea, how long do you
13 think you stayed on the line before you hung up after you
14 heard nothing?

15 A. I couldn't say.

16 Q. A couple of minutes?

17 A. I kept saying, "Carol, are you all right? Are you
18 all right? What's wrong?" And then, obviously, she was not
19 going to answer.

20 Q. You have been interviewed a number of times by
21 police detectives from Arizona about this case; right?

22 A. Yes.

23 Q. Do you remember telling them at one point that you
24 had the sense to somehow that Carol may have been moving from
25 the kitchen area down the hall while she was talking to you?

1 A. Yes. I had that feeling. I had that feeling that
2 she had moved. You have been in the house. You know how the
3 sink is in relation to the island that is out there.

4 Q. These folks haven't been there and they haven't
5 seen all the pictures yet.

6 A. When she said that long drawn out "well," I
7 pictured her in my mind moving through that little hall, that
8 little space way there by the pantry to the hallway. I
9 pictured that. I mean, I have no way of knowing if that is
10 true, that is just what I pictured happening. I surmise that
11 she had heard something, and she was going to check on it.

12 Q. When you had had these calls for all these years
13 after your husband passed with Carol, did you have the idea
14 that Carol would tend to take this cordless phone and walk
15 around the house while she was talking to you? Is that
16 something you think she did?

17 A. I assume she would use either that phone or her
18 cell phone.

19 Q. You told the police officers when you were
20 interviewed that there were times when you knew she was
21 working on her computer because you could hear the click,
22 click, click of the keyboard?

23 A. Yes.

24 Q. But you didn't hear anything like that?

25 A. I did not hear anything that night.

1 Q. Now, the floor in that part of the house, in the
2 kitchen and down that hallway is Mexican tile; isn't it?

3 A. Correct.

4 Q. But you didn't hear something that sounded like
5 the phone being dropped on a tile floor?

6 A. No, I did not.

7 Q. And you didn't hear any other voices?

8 A. No, I did not.

9 Q. It looks like you -- if I understand what you are
10 saying, you are saying that when you called back, you hung up
11 your phone; right?

12 A. Yes.

13 Q. And then you called her right back because you had
14 her landline on the speed dial on your phone?

15 A. Yes.

16 Q. So you could just hit a number?

17 A. No. It is an older phone. I had to go through
18 the motions and get her.

19 Q. And you did that and dialed it back.

20 A. Yeah.

21 Q. Tell me again what happened when you called her
22 back?

23 A. It just rang.

24 Q. Did, to your knowledge --

25 A. No answer.

1 Q. Sorry. Go ahead.

2 A. It just rang. There was no answer.

3 Q. To your knowledge, did that phone -- let's assume
4 that Carol was talking to you on that cordless phone. Is
5 that connected to an answering machine?

6 A. There is an answering machine -- there was an
7 answering machine in the home. Whether or not they were
8 connected, I have no knowledge.

9 Q. Do you remember in the last few months with Carol,
10 ever calling her when she wasn't home and leaving her a
11 message on her answering machine?

12 A. Beg your pardon?

13 Q. Do you remember in the several months before Carol
14 passed, a time when you would have called her at home when
15 she wasn't there and gotten her answering machine? Did you
16 ever do that, instead of getting her on the phone?

17 A. I don't recall any instance.

18 Q. Do you remember ever leaving her a message on her
19 answering machine at Bridle Path?

20 A. I don't recall doing that.

21 Q. Would she always call you? Is that the way --

22 A. Yes. She called me, because I was at home, and
23 she was on the way getting home from work.

24 Q. So this nightly call was -- part of the routine
25 was that Carol would call you at a particular time?

1 A. Yes.

2 Q. You say the phone rang and rang and it never
3 picked up. Carol didn't pick it up, and it didn't go to an
4 answering machine or voice mail when you called back?

5 A. When I called back, it rang several times, and I
6 hung up, obviously.

7 Q. And then you called Steve?

8 A. Yes.

9 Q. Okay. And you had his landline number, so you
10 left him the voice mail that we heard here?

11 A. Yes. I had him in my address book. I had to go
12 get the address book.

13 Q. And you knew Katie was out of the country?

14 A. Right.

15 Q. And you didn't have a number for Charlotte?

16 A. I didn't have anything for Charlotte.

17 Q. But you did have a number in your book for Steve?

18 A. Yes. I had both his numbers.

19 Q. It looks like, depending on whether you listen to
20 the time on the message or the phone records, that call to
21 Steve was around 8:06 or 8:07 Arizona time that night. Does
22 that seem about right? It would have taken you a few minutes
23 to find the number?

24 A. It was -- you know, I have no concept of what time
25 it was.

1 Q. I understand.

2 A. It is just that generally we talked around 10:00
3 her time, which was 8:00 my time.

4 Q. Okay. And so then you called -- you called
5 information to see if they had a listing for Jim Knapp;
6 right?

7 A. Yes.

8 Q. And they didn't have anything?

9 A. They didn't have one.

10 Q. He lived right there. He lived right on the
11 property?

12 A. He was in the guesthouse.

13 Q. That was after you called Steve, but before you
14 called the police?

15 A. That's correct.

16 Q. And then you called the Prescott Police
17 Department, and they told you that this took place outside
18 the city limits, out in the county; is that right?

19 A. They said it was not their jurisdiction.

20 Q. Did they transfer you or give you a number to
21 call?

22 A. They gave me a number to call.

23 Q. To hang up and call the Sheriff's office, and that
24 is the call we heard here?

25 A. Right.

1 Q. When you finished with that call, you thought that
2 the police were going to send somebody around to check on
3 Carol?

4 A. Absolutely. They said they would.

5 Q. Okay. And then from what we have talked about
6 here, you and your son, John, tried a couple more times to
7 call Carol. And what happened when you called Carol -- let's
8 look at the times here. There is a call at 8:17, another
9 five-second call. Do you remember that second call to Carol?

10 A. You know, I don't recall that at all. By this
11 time I am probably just so worried and so sure something bad
12 has happened. I would have tried anything. I would have
13 called anybody, and perhaps I did try her line again in hopes
14 that it was all a bad dream.

15 Q. Did you then call your son, John, and tell him
16 what had happened?

17 A. To my recollection, sir, after I spoke with the
18 Yavapai people, I called my son, and I know for a fact after
19 that, that he made numerous calls to the Yavapai people.

20 Q. At some point did your son, John, come over to
21 your house?

22 A. Not until he had received word from Steve that
23 Carol was dead.

24 Q. Because there is a call at -- well, let's go back.
25 There is a call from your son, John, from his home telephone

1 number to Carol's home at 8:40 Arizona, which would have been
2 10:40 your time, and that call was 47 seconds long. Do you
3 know whether John got her answering machine at that point?

4 A. I have no idea.

5 Q. Then there is another call from your house to
6 Carol's home at 9:27 for 30 seconds. The phone records say
7 there were two five-second calls, and then this one --

8 A. Repeat that, please.

9 Q. Yes, ma'am. There is a phone record that shows at
10 9:27 Arizona time, which would have been 11:27 Tennessee
11 time, there was a call from your home to Carol's home that
12 lasted 30 seconds.

13 A. I have absolutely no recollection of that.

14 Q. Do you remember getting -- I am just guessing
15 here. Do you remember getting Carol's answering machine
16 finally?

17 A. No.

18 Q. You don't think you ever did?

19 A. I don't think so.

20 Q. And then there is a call at 10:03, son John
21 calling Carol for 13 seconds, and you think he would have
22 still been at his house at that point; right?

23 A. Yes.

24 Q. There is another call from your home to Steve's
25 cell phone at 10:31 Arizona time, which would have been 12:31

1 in the morning in Tennessee, and I believe that that is a
2 phone call that we have heard about where John finally got
3 ahold of Steve. Steve said he was stepping out of the
4 shower, and his cell phone was ringing, and it was your son,
5 John. Was that call made from your home?

6 A. No. It was made from his home.

7 Q. Do you know why the phone records on Steve's cell
8 phone would show that it came from your home phone number?

9 A. I have no idea.

10 Q. You said that you thought that right after you
11 called Steve's landline, you also called his cell phone?

12 A. Yes, I did.

13 Q. You have a clear recollection of that?

14 A. My recollection, yes, but I called the landline
15 first and then the cell phone.

16 Q. The reason I have any question about this is that
17 Steve's cell phone records that we have given in this case do
18 not show a call from you that night. The first call that
19 comes into his cell phone, that his phone records reflect, is
20 the one at 10:31 Arizona time that we believe is when he
21 talked to your son, John. Are you absolutely certain that
22 you called Steve's cell phone?

23 A. I am certain that I did.

24 Q. Did you know this Jim Knapp very well?

25 A. I had never met Mr. Knapp.

1 Q. Had you ever spoken with him?

2 A. I met him when I came out for the memorial.

3 Q. Right. Do you think you had ever talked to him on
4 the phone before?

5 A. I might have spoken with him on the phone, yes.

6 Q. Did you consider him a friend?

7 A. He was a friend of Carol's.

8 Q. I understand. Did you have some personal
9 relationship with Mr. Knapp?

10 A. Sorry?

11 Q. Did you have a particular relationship with
12 Mr. Knapp?

13 A. Did I?

14 Q. Yes, ma'am.

15 A. No.

16 Q. You said it was strange when Steve called you to
17 inquire about whether you were up to having the girls come
18 out at Thanksgiving. That is how you took the call; right?

19 A. Well, it was strange, because the last time I had
20 spoken with him on the phone was probably when he left A.G.
21 Edwards and went to UBS, and he was calling to see about
22 taking my account with him. That was -- to my knowledge that
23 was the last time I had spoken with him on the phone.

24 Q. So getting a call out of the blue in 2008 --

25 A. It was surprising.

1 Q. Was there anything particularly surprising about
2 the fact that he was asking if it was okay with you if the
3 girls came to Tennessee for Thanksgiving? Did that seem very
4 strange to you?

5 A. I thought it was odd.

6 Q. Let me talk a little bit more about the house.
7 You said the last time you were in the house was in the Fall
8 of 2007?

9 A. Thanksgiving of 2007.

10 Q. And you stayed out at the house when were you
11 here?

12 A. I stayed in the guesthouse, usually.

13 Q. In the guesthouse. So Mr. Knapp wasn't there when
14 you were there?

15 A. No.

16 Q. And so you spent Thanksgiving here with Carol and
17 the girls?

18 A. Yes.

19 Q. Did you see Steve on that trip?

20 A. Did not see Steve.

21 Q. They were right in the middle of their divorce
22 then; right?

23 A. In 2006, he came with the family for Thanksgiving,
24 but 2007, he did not.

25 Q. I think the record showed they filed for divorce

1 in the early Spring of 2007. Does that sound right?

2 A. February, I believe.

3 Q. And do you remember anything about the condition
4 of the door locks when you were there? I know what you said
5 about wanting to be sure that Carol was taking care of
6 herself. She was at the house without Steve living there in
7 2007, of course; right?

8 A. She told me that the day she filed for divorce,
9 she had all the locks changed.

10 Q. And she wouldn't have given Steve a key?

11 A. She gave keys to the girls.

12 Q. Okay. And that would have been something she told
13 you back in the winter or the early spring of 2007?

14 A. After she had filed for divorce.

15 Q. And inside the house -- we are going to see
16 pictures here that -- these folks have not seen pictures of
17 the house or the inside of the house yet, but we are going to
18 get to that pretty soon here in the trial.

19 Generally speaking, the kitchen has an
20 island in it; right?

21 A. Yes.

22 Q. And then along two walls here it has a sink and a
23 stove?

24 A. Cabinets.

25 Q. And counter space and cabinets up and down; right?

1 A. Right.

2 Q. And then this pantry you are talking about is sort
3 of connected to the island?

4 A. Yes.

5 Q. And there is a little walkway. So when you say
6 you have this picture of Carol walking down the hallway, she
7 is going out of the kitchen, and she would take a right-hand
8 turn and go down the hallway towards the bedrooms; right?

9 And the laundry room is on the right?

10 A. Correct.

11 Q. And the girls' bedrooms are on the left?

12 A. Yes.

13 Q. And her bedroom is all the way at the end of the
14 hall on the right; is that right?

15 A. That's correct.

16 Q. Did you also tell the police when you were talking
17 to them that you had some sense that maybe when Carol said
18 "Oh, no" that she was falling?

19 A. You know, I pictured that in my mind. It is hard
20 to say if I pictured it then or later. I just -- I don't --

21 Q. That is one of the tricky things about memory,
22 when you are thinking about something like this and you are
23 asked about it over and over again.

24 A. It is really so much time has passed also. I
25 had -- I don't know whether this is admissible or not.

1 Q. Let's give it a shot.

2 A. I had prayed that she was at least killed or
3 unconscious with the first blow, so that she didn't --

4 MR. SEARS: I don't have anymore questions.

5 THE WITNESS: So she didn't realize what was
6 happening.

7 THE COURT: Mr. Butner, do you have redirect?

8 MR. BUTNER: I do, Judge.

9 THE COURT: The question is whether we ought
10 to have a break now. I think I will take a brief break. I
11 want to give people a chance to rest up.

12 Remember the admonition. Let's take
13 about ten minutes.

14 (Whereupon, the jury exits the courtroom.)

15 (Brief recess.)

16 (Whereupon, the jury enters the courtroom.)

17 THE COURT: The record reflects the presence
18 of the jury, the defendant and the defense team, Mr. Paupore
19 and Mr. Butner. The witness is on the stand.

20 Redirect examination.

21 MR. BUTNER: Thank you, Judge.

22 REDIRECT EXAMINATION

23 BY MR. BUTNER:

24 Q. Ms. Kennedy, if I understood your earlier
25 testimony, you said that you were on the phone, she said "Oh,

1 no," and the phone went dead?

2 A. Correct.

3 Q. Did you hear a click or anything like that?

4 A. I heard absolutely nothing.

5 Q. Okay. You didn't hear a click?

6 A. No.

7 Q. Did you hear any sound at all?

8 A. No sound whatsoever.

9 Q. It went dead?

10 A. That's the way I described it.

11 Q. You didn't hear the dogs barking?

12 A. No dogs barking.

13 Q. You didn't hear the phone hit the floor?

14 A. No.

15 Q. Had Carol ever hung up on you before?

16 A. No, she had not.

17 Q. Okay. How did you usually end your conversation?

18 A. She would say, "I love you, Mama." I would say,
19 "I love you, Carol," and we would hang up simultaneously
20 probably.

21 MR. BUTNER: No further questions. Thank you.

22 THE COURT: I have a number of jury questions.

23 Either side wish to make any additional record on those?

24 MR. SEARS: I don't think we made any record
25 on it.

1 THE COURT: That is what I am asking. Do you
2 want to make a record?

3 MR. SEARS: No, Your Honor. If the Court
4 remembers our discussions, I think we are fine.

5 THE COURT: Mr. Butner.

6 MR. BUTNER: None from the State, Judge.
7 Thank you.

8 QUESTIONS BY THE JURY

9 THE COURT: Well, Miss Kennedy, we have some
10 questions from the jurors, then.

11 Question: Did you hear the water running
12 the entire time on the phone? Was it running still -- was it
13 running till the end when the phone went dead?

14 THE WITNESS: No. It was just briefly I heard
15 the water when we were talking about making dinner and making
16 our salads, just briefly.

17 THE COURT: If you know, does Carol's phone go
18 to voice mail if it is off the hook, or does it give a busy
19 signal?

20 THE WITNESS: I'm sorry, I do not know.

21 THE COURT: Thank you.

22 As far as you know, when you say Carol
23 fed the dogs and locked the doors on July 2nd, do you know if
24 Carol fed the dogs before or after her run?

25 THE WITNESS: I would say it was after her

1 run.

2 THE COURT: If you know, do the dogs usually
3 bark at strangers?

4 THE WITNESS: Well, I have never been around
5 them when they were confronted by strangers, so I have no
6 knowledge.

7 THE COURT: Do you have any idea of where the
8 dogs were at the time that you are on the phone with Carol on
9 July 2nd and she said "Oh, no"?

10 THE WITNESS: No. No idea, sir.

11 THE COURT: Do you know commonly if the dogs
12 are in the house all the time?

13 THE WITNESS: Yes, they are.

14 THE COURT: Follow-up questions by the
15 lawyers?

16 MR. BUTNER: None from the State, Judge.
17 Thank you.

18 THE COURT: Mr. Sears?

19 MR. SEARS: No, Your Honor.

20 THE COURT: Members of the jury, any other
21 questions that you might have before Ms. Kennedy steps down?
22 Apparently not.

23 You may step down, Ms. Kennedy. Thank
24 you. Be careful.

25 Next witness, Mr. Butner.

1 MR. BUTNER: Thanks, Judge. I would like to
2 call Jacob Janusek to the stand, please.

3 THE CLERK: You do solemnly swear or affirm
4 under the penalty of perjury that the testimony you are about
5 to give will be the truth, the whole truth, and nothing but
6 the truth, so help you God?

7 THE WITNESS: I do.

8 THE COURT: First thing I would ask, if you
9 would give us your full name and spell the last name, please.

10 THE WITNESS: Jacob Edward Janusek,
11 J-A-N-U-S-E-K.

12 THE COURT: Thank you.

13 Mr. Butner.

14 JACOB EDWARD JANUSEK,
15 called as a witness, having been duly sworn, testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. BUTNER:

19 Q. Good morning, Jacob. How are you today?

20 A. Good. How are you?

21 Q. I am fine.

22 In what community do you reside?

23 A. In Prescott, Arizona.

24 Q. And how old are you?

25 A. 18.

1 Q. And how long have you lived in Prescott, Arizona?

2 A. About 16 years.

3 Q. At the present time, are you employed?

4 A. No.

5 Q. What are you doing right now?

6 A. I am currently registered at Yavapai College.

7 Q. Are you going to go to school this summer?

8 A. In the Fall.

9 Q. And what are you doing for the summer?

10 A. Just having fun.

11 Q. Okay. You were employed before; weren't you?

12 A. Correct.

13 Q. What were you doing?

14 A. I worked at Barbudo's Mexican Grill.

15 Q. How long have you worked at Barbudo's?

16 A. About a month.

17 Q. Going back to July -- actually, June. Let's go
18 back to June of 2008.

19 A. Okay.

20 Q. Toward the end of June of 2008, where were you
21 living?

22 A. I was living with my parents on Pleasant Street.

23 Q. And around the end of the month in June of 2008,
24 did you have some difficulties there?

25 A. Yes.

1 Q. And so what happened at that point in time?

2 A. I went to stay with Mr. DeMocker at his house.

3 Q. And where was that house located?

4 A. Alpine Meadows in Hassayampa.

5 Q. Do you remember the address?

6 A. I do not.

7 Q. Okay. And how was it that it came about that you
8 went to stay with Mr. DeMocker at Alpine Meadows?

9 A. I had gotten in an argument with my parents, and
10 they had told me that if I needed to, I could leave for a
11 little bit and kind of take a break.

12 Q. And what made you settle on Mr. DeMocker's
13 residence?

14 A. I was dating his daughter at the time.

15 Q. And did he offer for you to stay there?

16 A. Yes.

17 Q. So, as of July the 2nd of 2008, how long had you
18 been staying there?

19 A. One night.

20 Q. So you had spent the night there on July the 1st?

21 A. Correct.

22 Q. Before staying there the first night on July the
23 1st, had you been to Mr. DeMocker's residence on prior
24 occasions?

25 A. Yes.

1 Q. Approximately how many times?

2 A. Couldn't really give you an approximate number.
3 It was a few times a week for dinner.

4 Q. Okay. And this was while you were dating his
5 daughter Charlotte?

6 A. Yes.

7 Q. How long had you been dating Charlotte as of July
8 the 2nd of 2008?

9 A. Approximately six months.

10 Q. And let's go back to that specific date, then, of
11 July the 2nd of 2008. You had spent the night there the
12 previous night at the Alpine Meadows residence?

13 A. Correct.

14 Q. And do you recall what you did during the day of
15 July the 2nd of 2008?

16 A. Yes.

17 Q. Tell us what you did.

18 A. Charlotte and I had woken up around ten o'clock.
19 Made breakfast with one of the friends that had stayed there
20 also.

21 Q. Who was that?

22 A. Presley.

23 Q. Presley male or female?

24 A. Female.

25 Q. And you made breakfast and then what?

1 A. And then Charlotte had an appointment at two
2 o'clock. It was doctor's appointment. And after that we
3 went to lunch at Barbudo's.

4 Q. Did you go with Charlotte to the doctor's
5 appointment?

6 A. I went with her, but I did not go into the
7 appointment. I waited in the car.

8 Q. Who drove?

9 A. Charlotte did.

10 Q. Did you have a driver's license at that time?

11 A. No.

12 Q. You went to the doctor's appointment, and you went
13 to Barbudo's?

14 A. Correct.

15 Q. Barbudo's for lunch?

16 A. Correct.

17 Q. Approximately what time was that?

18 A. Around 3:30.

19 Q. Do you remember what you had for lunch?

20 A. I believe it was a chile relleno.

21 Q. How is it that you are able to remember that you
22 had a chile relleno?

23 A. Reading the transcripts from that date.

24 Q. You went back and reviewed the transcripts?

25 A. Correct.

1 Q. Do you have an independent recollection of you
2 having a chile relleno for lunch?

3 A. No.

4 Q. After eating lunch at Barbudo's, where did you
5 guys go?

6 A. Then we went over to Safeway to get some cookies
7 for Mr. DeMocker.

8 Q. Okay. And approximately what time was that?

9 A. I can't remember.

10 Q. Did you deliver the cookies to Mr. DeMocker?

11 A. Yes.

12 Q. Where did you deliver the cookies?

13 A. At his office.

14 Q. This is the UBS office?

15 A. Correct.

16 Q. Probably ought to -- we have got a map here. It
17 would be better if we had the easel.

18 You lived in Prescott a long time, 16
19 years?

20 A. Correct.

21 Q. And you were living at the Alpine Meadows
22 residence; right?

23 A. Correct.

24 Q. Do you see it on the map there?

25 A. I do.

1 Q. Okay. Why don't you point to it for the jury.

2 A. (Witness indicates.)

3 THE COURT: If you need this, Mr. Butner.

4 MR. BUTNER: I will see if he can handle that.

5 Maybe that would be better.

6 Q. This is a little pointer so you can point at
7 places.

8 A. Okay.

9 Q. Do you recall where the UBS office was located
10 relative to Alpine Meadows?

11 A. Yes. It was about right here.

12 Q. Do you see that address there, 1570 Plaza West
13 Drive?

14 A. Yes.

15 Q. Do you recognize that address?

16 A. I don't recognize the address specifically, just
17 the area.

18 Q. It was right around in that area where the UBS
19 office was?

20 A. Yes.

21 Q. Very close to the Alpine Meadows residence; right?

22 A. Yes.

23 THE COURT: Mr. Janusek, the jurors at the
24 very end have to hear you, too. So, if you don't mind,
25 either speaking into the microphone or speaking loudly enough

1 for the people at the end of the jury box.

2 THE WITNESS: Okay.

3 BY MR. BUTNER:

4 Q. So, basically, it was right around the corner from
5 the Alpine Meadows residence?

6 A. Correct.

7 Q. You stopped by there to visit with Mr. DeMocker?

8 A. Yes.

9 Q. With the cookies?

10 A. Yes.

11 Q. About what time of day was that?

12 A. Four o'clock.

13 Q. And did you have any conversation with
14 Mr. DeMocker when you were their visiting him?

15 A. Yes. We talked about the day a little bit and
16 evening plans. He had mentioned that we were either going to
17 do movie and a dinner that night, or he was going to go on a
18 bike ride or run. He hadn't decided yet.

19 Q. Did he describe what type of bike ride or run he
20 was going to go on, that is, the difficulty or the duration?

21 A. It was going to be a long bike ride or run.

22 Q. Okay. And did he indicate to you at that time
23 where he was going to do his bike ride or run?

24 A. No.

25 Q. At that point, did you assume where he was going

1 to go?

2 A. Not at that point, no.

3 Q. Okay. So you dropped off the cookies at about
4 four o'clock, and where did you go from there?

5 A. Charlotte and I went back to the Alpine Meadows
6 residence.

7 Q. And at some point did Mr. DeMocker come home?

8 A. Yes.

9 Q. Approximately what time did he come home?

10 A. Approximately 5:00 p.m.

11 Q. And what were you and Charlotte doing at that
12 point?

13 A. Playing video games.

14 Q. And after Mr. DeMocker came home about 5:00 p.m.,
15 how long did he remain there?

16 A. About 15 to 20 minutes.

17 Q. Okay. And then what happened?

18 A. Then he had stated that he had decided to go on a
19 long bike ride and had left.

20 Q. Did he tell you where he was going on this long
21 bike ride?

22 A. No.

23 Q. So is this the second time he said he was going on
24 a long bike ride?

25 A. Yes.

1 Q. How was he dressed when he left?

2 A. In shorts and a T-shirt.

3 Q. Do you remember the color of his clothes or
4 anything like that?

5 A. I do not.

6 Q. So approximately what time did he leave to go on
7 his bike ride?

8 A. I don't remember. I couldn't give you a time.

9 Q. Okay. You said he was there 15 to 20 minutes?

10 A. Yes.

11 Q. And you thought he got home about five o'clock?

12 A. Yes.

13 Q. So would it be fair to state that he left 5:15,
14 5:20?

15 A. Yes.

16 Q. And when he left, what were you and Charlotte
17 doing?

18 A. Playing video games.

19 Q. Still playing video games?

20 A. Correct.

21 Q. Do you remember what kinds of video games you were
22 playing?

23 A. I think it was a car racing game.

24 Q. Okay. And after Mr. DeMocker left, what did you
25 and Charlotte do?

1 A. Charlotte and I went up to the pool at the fitness
2 center.

3 Q. Okay. And that's still in the Alpine Meadows
4 neighborhood?

5 A. In the vicinity, yes.

6 Q. Would you describe for us how you got to the pool
7 at the fitness center?

8 A. Charlotte drove us up there.

9 Q. Okay. And would you describe the route that you
10 took?

11 A. You would exit the Alpine Meadows community,
12 turning left, and go up a hill, and the workout center was on
13 the right at the top of the hill.

14 Q. Okay. And just a couple of minutes away, then?

15 A. Yes.

16 Q. And you are in her car; right?

17 A. Yes.

18 Q. Where did you guys park?

19 A. We parked near the entrance to the pool.

20 Q. And did you sign in there?

21 A. No.

22 Q. And when you went into -- you did go into the
23 swimming pool; is that correct?

24 A. Correct.

25 Q. How did you get into the swimming pool?

1 A. Entered through the metal gate to the pool area.

2 Q. So you didn't go over through the front entrance
3 to the fitness center?

4 A. Correct. Just directly into the pool.

5 Q. And the way that the parking lot is set up
6 there -- well, the way that the fitness center and the pool
7 and the parking lot are set up, the fitness center is the
8 first thing that you come to when you come into the parking
9 lot; right?

10 A. Correct.

11 Q. It is a big building?

12 A. Right.

13 Q. And then the pool is beside the big building?

14 A. Correct.

15 Q. And the parking lot stretches from the driveway
16 all the way back to the end of the pool; is that correct?

17 A. Correct.

18 Q. And back in the back there, there is an area back
19 behind there where you can also park that is part of the
20 parking lot?

21 A. Correct.

22 Q. And you and Charlotte went into the swimming pool?

23 A. Yes.

24 Q. And parked by the pool entrance, you said?

25 A. Yes.

1 Q. So when you were in the swimming pool, how long
2 were you there, approximately?

3 A. Approximately half an hour.

4 Q. And it was still daylight then; right?

5 A. Yes.

6 Q. About what time do you think you got to the pool?

7 A. It was after 7:30.

8 Q. But it was still daylight?

9 A. Yes.

10 Q. And so when you are in the swimming pool, you can
11 look right out at the parking lot and basically see the whole
12 parking lot; right?

13 A. Yes.

14 Q. Did you see Mr. DeMocker's car parked there?

15 A. No.

16 Q. Where did you think Mr. DeMocker was riding his
17 bike at that point in time?

18 A. On the Hassayampa loop.

19 Q. And tell us, basically, what is the Hassayampa
20 loop?

21 A. I believe it is just a trail that goes around the
22 golf course.

23 Q. And at some point, did you and Charlotte discuss
24 the fact that that is where he was riding his bike, on the
25 Hassayampa loop?

1 MR. SEARS: Calls for hearsay.

2 THE COURT: Restructure the question.

3 BY MR. BUTNER:

4 Q. At some point, did it come up as a topic of
5 discussion between you and Charlotte as to where Mr. DeMocker
6 was riding his bike?

7 MR. SEARS: Same objection.

8 THE COURT: Overruled. Yes or no answer.

9 THE WITNESS: No.

10 BY MR. BUTNER:

11 Q. Okay. So you just basically assumed he was on the
12 Hassayampa loop?

13 A. Yes.

14 MR. SEARS: Leading.

15 THE COURT: Sustained.

16 MR. SEARS: Move to strike.

17 THE COURT: Rephrase the question. Strike the
18 answer.

19 BY MR. BUTNER:

20 Q. Do you recall Mr. DeMocker ever telling you where
21 he was going to go for his long bike ride?

22 A. No, I do not.

23 Q. In fact, that day, that entire July 2nd, did
24 Mr. DeMocker ever tell you where he was riding his bike?

25 A. I believe he did at dinnertime when he got back.

1 Q. We will get to that in a few minutes, then.

2 Okay. So you are there at the pool. You
3 don't see Mr. DeMocker's car; is that correct?

4 A. Correct.

5 Q. And you are there -- approximately how long were
6 you at the pool?

7 A. Approximately half an hour.

8 Q. And you said you arrived there after 7:30 or so?

9 A. Correct.

10 Q. So after being at the pool for about half an hour,
11 what did you guys do, you and Charlotte?

12 A. Went back to the Alpine Meadows residence.

13 Q. And when you got back to the Alpine Meadows
14 residence, was there anybody home?

15 A. No.

16 Q. So what was it, a little after eight o'clock at
17 that point?

18 A. Yes.

19 Q. And what did you do at that point in time?

20 A. We played more video games.

21 Q. Okay. How long did you play the video games, if
22 you can recall?

23 A. I can't recall.

24 Q. All right. And then what did you do?

25 A. Then we took a nap.

1 Q. Okay. Now, you had been to the DeMocker residence
2 on previous occasions; right?

3 A. Correct.

4 Q. And I think I understood your testimony earlier,
5 you indicated that you had eaten dinner there on previous
6 occasions?

7 A. Yes.

8 Q. Was there a particular time, to your recollection,
9 for eating dinner there?

10 A. Between 7:00 and 9:00.

11 Q. 7:00 to 9:00 p.m. was the usual time for dinner?

12 A. Correct.

13 Q. So you are there playing video games, and it is
14 after 8:00 p.m. Were you concerned about the status of
15 dinner at that point?

16 A. Yes. We were beginning to get hungry.

17 Q. Okay. But you went and took a nap?

18 A. Yes.

19 Q. How long was your nap, approximately?

20 A. About an hour and a half.

21 Q. What time did you wake up?

22 A. Quarter to 10:00. 9:45.

23 Q. And what did you do at that point?

24 A. Charlotte had tried to call Mr. DeMocker on his
25 cell phone.

1 Q. Was she able to reach him?

2 A. No.

3 Q. Okay. Now you had spent the day with Charlotte;
4 is that correct?

5 A. Correct.

6 Q. During the day, did Charlotte have contact with
7 her mother?

8 A. Yes.

9 Q. When's the last -- well, describe for us the
10 contact that Charlotte had with her mother to your knowledge?

11 A. To my knowledge, they were talking about a big
12 storm that we had the day before.

13 Q. How were they doing that?

14 A. Through text message.

15 Q. Did you see Charlotte texting back and forth with
16 her mother?

17 A. Yes.

18 Q. And was there, in fact, a big storm the day
19 before?

20 A. Yes.

21 Q. Do you remember that?

22 A. I do.

23 Q. What kind of a storm was it?

24 A. I believe it was one of the monsoon storms.

25 Q. Was it a rain storm?

1 A. Yes.

2 Q. Where were you when the storm hit, if you can
3 recall?

4 A. I was in Prescott.

5 Q. And it rained?

6 A. Yes.

7 Q. Do you remember approximately what time of day it
8 was?

9 A. Would have been afternoon.

10 Q. Beyond that, can you recall anymore precisely?

11 A. I believe it rained well into the evening.

12 Q. So it rained the day before. You recall this
13 storm; correct?

14 A. Correct.

15 Q. Anyway, back to July the 2nd, do you recall
16 approximately the last -- the time at which Charlotte had
17 last contact with her mother?

18 A. I believe it was around 7:30.

19 Q. And where were you guys at when that took place?

20 A. The Alpine Meadows residence.

21 Q. So were you still at Alpine Meadows having not
22 gone to the pool yet?

23 A. Correct.

24 Q. So you woke up from your nap about what time, did
25 you say?

1 A. 9:45.

2 Q. And what happened at that point in time? It is
3 9:45 p.m.; right?

4 A. Correct.

5 Q. What did you and Charlotte do?

6 A. Charlotte and I went to the store to get stuff for
7 dinner.

8 Q. What store did you go to?

9 A. Safeway.

10 Q. Now, you indicated she had tried to contact her
11 father?

12 A. Correct.

13 Q. How did she try to contact him?

14 A. By calling his cell phone.

15 Q. Did she use her cell phone?

16 A. Yes.

17 Q. Was she able to reach him?

18 A. No.

19 Q. And do you recall approximately what time she
20 called him?

21 A. Approximately 9:50, 9:55.

22 Q. Were you guys on your way to the store when she
23 was trying to call him?

24 A. Yes.

25 Q. And who was driving?

1 A. Charlotte.

2 Q. You indicated you were going to the Safeway;
3 right?

4 A. Correct.

5 Q. What road or street is the Safeway located on?

6 A. Iron Springs.

7 Q. And so did you go down Gail Gardner Way to get
8 there?

9 A. Yes.

10 Q. And did you go by the Shell gas station?

11 A. We did.

12 Q. And then which way did you -- well, which way did
13 you go once you reached the Shell gas station?

14 A. We turned right.

15 Q. You turned right on Iron Springs Road?

16 A. Correct.

17 Q. Can you point to us on this map approximately
18 where the Safeway is located?

19 A. About right here.

20 Q. Okay. Just down here to the right from the Shell
21 gas station?

22 A. Might be on the other side of this street right
23 here, but I am not entirely sure.

24 Q. But down to the right past the Shell intersection
25 there; is that correct?

1 A. Correct.

2 Q. Did anything unusual -- did you observe anything
3 unusual as you passed through the intersection there at Gail
4 Gardner and Iron Springs?

5 A. Yes. I thought that we had seen Mr. DeMocker's
6 car, and I pointed it out to Charlotte.

7 Q. Okay. And this was at approximately what time?

8 A. Ten o'clock.

9 Q. And you guys are headed to the Safeway, and which
10 direction was Mr. DeMocker's car headed?

11 A. His car was turning into Gail Gardner from Iron
12 Springs.

13 Q. And what kind of turn was it making? Was it
14 making a right-hand turn or a left-hand turn?

15 A. I believe it --

16 Q. I guess the better way, would you show us which
17 direction his car was coming from and which way it was
18 turning on the map.

19 A. Coming down from here, turning onto Gail Gardner.

20 Q. So, he made a right-hand turn onto Gail Gardner
21 Way?

22 A. Yes.

23 Q. And you guys were passing through that
24 intersection making a left -- or making a right-hand turn
25 also?

1 A. Correct.

2 Q. Did Charlotte try and reach her father at that
3 point in time on her phone?

4 A. I don't think so.

5 Q. And so you went down to the Safeway?

6 A. Yes.

7 Q. And at some point in time while were you shopping
8 at the Safeway, did you hear from Charlotte's father?

9 A. Yes.

10 Q. How long were you at the Safeway? Do you know?

11 A. Ten, 15 minutes.

12 Q. What were you getting at the Safeway?

13 A. We were getting ingredients for dinner, stir fry.

14 Q. And were you still in the store when Mr. DeMocker
15 called?

16 A. Yes.

17 Q. And could you hear what he was saying?

18 A. No.

19 Q. So, anyway, did you and Charlotte make plans at
20 that point in time after he had called?

21 A. Yes, to go back to the Alpine Meadows house and
22 prepare dinner.

23 Q. Okay. And did you go back to Alpine Meadows and
24 prepare dinner?

25 A. Yes.

1 Q. When you got to Alpine Meadows, was Mr. DeMocker's
2 car there?

3 A. Yes.

4 Q. Where was his car located?

5 A. Parked in the garage.

6 Q. And did you notice anything unusual about his car
7 as it was parked in the garage?

8 A. His lights were still on.

9 Q. And was Mr. DeMocker still in the garage?

10 A. No.

11 Q. Had you been around that car before,
12 Mr. DeMocker's car?

13 A. Yes.

14 Q. Did you have an understanding as to why his lights
15 were still on?

16 A. They were just temporary lights. They would turn
17 off after about 20 to 30 seconds.

18 Q. So they were on a timed delay, and they would shut
19 themselves off?

20 A. I believe so, yes.

21 Q. And did you see Mr. DeMocker's bike?

22 A. I did.

23 Q. Where was it located?

24 A. On the left-hand side the garage.

25 Q. So you and Charlotte pulled into the garage in her

1 vehicle?

2 A. Correct.

3 Q. What kind of car did she have?

4 A. BMW.

5 Q. And what kind of car was Mr. DeMocker's?

6 A. BMW also.

7 Q. Were they the same kind of car -- I mean, same
8 model?

9 A. No, they were not.

10 Q. What model did Mr. DeMocker have?

11 A. I do not know.

12 Q. Was it a bigger or smaller one?

13 A. It was larger.

14 Q. And do you know what kind of model Charlotte had?

15 A. I believe it was a 1 series.

16 Q. And what color was Mr. DeMocker's car?

17 A. Silver.

18 Q. What color was Charlotte's car?

19 A. White.

20 Q. So you pulled into the garage. Which side of
21 the -- it was a two-car garage; right?

22 A. Correct.

23 Q. Which side did you and Charlotte park on?

24 A. On the left side.

25 Q. And where was the bike located relative to where

1 you guys parked?

2 A. It would have been on the driver's side of
3 Charlotte's car.

4 Q. And was the wheel on it?

5 A. No.

6 Q. And which wheel was off of it?

7 A. The front.

8 Q. Were you able to notice whether the back tire was
9 flat or not?

10 A. No.

11 Q. So you guys pulled into the garage. Did you shut
12 the garage door?

13 A. I can't remember.

14 Q. Was the garage door shut before you came up to it?

15 A. I don't remember.

16 Q. So you pulled into the garage, and then what did
17 you do?

18 A. We went upstairs and began to prepare dinner.

19 Q. And when you got upstairs and began to prepare
20 dinner, where was Mr. DeMocker?

21 A. In the shower.

22 Q. Could you hear him in there?

23 A. I could hear the shower running.

24 Q. So you basically assumed it was him in there?

25 A. Yes.

1 Q. Did you notice whether the washing machine was
2 running or not?

3 A. I did not.

4 Q. So approximately what time is it that you arrive
5 back at the Alpine Meadows residence?

6 A. Around 10:30.

7 Q. And were you hungry?

8 A. Yes.

9 Q. Okay. So did you and Charlotte start fixing
10 dinner right away?

11 A. Yes.

12 Q. Did you help her?

13 A. I did.

14 Q. What did you do?

15 A. Threw the trash away.

16 Q. Okay. Anything else?

17 A. I can't remember anything else.

18 Q. But you were there in the kitchen with her?

19 A. Yes.

20 Q. And at some point in time did Mr. DeMocker come
21 out of where he was taking the shower?

22 A. Yes.

23 Q. How was he dressed when you first saw him?

24 A. He was just in a towel.

25 Q. Okay. And what did he say at that point in time?

1 A. He asked how dinner was coming along.

2 Q. Did he say anything else?

3 A. Not to my knowledge.

4 Q. Did you notice anything unusual about Mr. DeMocker
5 at that point in time when he had emerged from the shower
6 with just a towel on?

7 A. I did notice a cut on his arm and on his leg.

8 Q. Did you ask him about that?

9 A. Yes.

10 Q. When did you ask him?

11 A. At that time.

12 Q. What did he say?

13 A. That it was from his bike ride.

14 Q. Did he tell you anything further about it?

15 A. The cuts hurt.

16 Q. Okay. Did he tell you exactly how he got the
17 cuts?

18 A. They were from branches, I believe.

19 Q. Is that what he said?

20 A. Yes.

21 Q. Did he say how these branches had cut him?

22 A. No.

23 Q. He just said they were from branches on the bike
24 ride?

25 A. Right, just riding past.

1 Q. Riding past branches?

2 A. Correct.

3 Q. So did Mr. DeMocker then go and get some clothes
4 on?

5 A. Yes.

6 Q. Did you guys sit down to dinner?

7 A. Yes.

8 Q. Let's back up a little bit before we start talking
9 about dinner.

10 Earlier in the day while you and
11 Charlotte were playing video games -- and I say earlier in
12 the day. I mean earlier that evening, before you left to go
13 to the pool, did you receive any telephone calls, or were
14 there any telephone calls made to the residence?

15 A. Not to my knowledge, no.

16 Q. How about when you came back from the pool? Do
17 you recall any telephone calls coming into the residence?

18 A. I do not.

19 Q. When you came back from the Safeway, did you
20 happen to notice if there was any messages being indicated on
21 the landline into the DeMocker residence?

22 A. I did not.

23 Q. Was that phone someplace where you could have seen
24 it?

25 A. Yes.

1 Q. So, you then sat down at the dinner table to eat
2 dinner; is that right?

3 A. Started to, yes.

4 Q. Had anything happened in the meantime after
5 Mr. DeMocker got out of the shower?

6 A. He had mentioned a phone call.

7 Q. What did he say about a phone call?

8 A. That there was a voice mail on his phone from his
9 business partner stating that he had left his computer on.

10 Q. Okay. And so did he sit down to dinner with you
11 guys?

12 A. No. He left for the office.

13 Q. So he left even before you started eating?

14 A. Yes.

15 Q. And how long was he gone?

16 A. Approximately five minutes.

17 Q. Very short time?

18 A. Yes.

19 Q. Did he come back?

20 A. Yes.

21 Q. Then what did you do?

22 A. Began to eat dinner.

23 Q. And were there any other interruptions during
24 dinner?

25 A. He had mentioned a voice mail from Ruth Kennedy.

1 Q. What did he say about the voice mail from Ruth
2 Kennedy?

3 A. That she was on the phone with Carol at the time
4 and the line went dead, and that's all I can remember.

5 Q. Okay. Did he indicate whether Ruth wanted him to
6 do anything as a result of that?

7 A. I can't remember.

8 Q. So he indicated that he received a voice mail from
9 Ruth Kennedy?

10 A. Yes.

11 Q. Was this while you guys were sitting at the table?

12 A. Yes.

13 Q. Was there anything unusual about this going on
14 with Mr. DeMocker and his cell phone while you guys were
15 seated at the dinner table?

16 A. It was my understanding that there were no cell
17 phones allowed at the dinner table.

18 Q. Where did that understanding come from?

19 A. Having dinner at the house previously. We would
20 leave our cell phones on the counter.

21 Q. Was this basically a rule of the house?

22 A. Yes.

23 Q. And the counter was located where?

24 A. In the kitchen just off of the dining room.

25 Q. Close by, but away from the dinner table?

1 A. Correct.

2 Q. And approximately what time was it that you were
3 seated there eating dinner at Mr. DeMocker's house this July
4 2nd of 2008?

5 A. It was around 11:00 p.m.

6 Q. Was the time of this dinner unusual?

7 A. Yes.

8 Q. What was unusual about the time?

9 A. It was late.

10 Q. A couple hours late; right?

11 A. Yes.

12 Q. Did you have any conversation with Mr. DeMocker
13 about how come you were eating dinner so late?

14 A. Yes.

15 Q. What did he tell you?

16 A. He stated that he got a flat tire on his bike ride
17 and had to walk back to his car, and that's why it was so
18 late -- he was running so late.

19 Q. And did he describe the trail that he was riding
20 on when he got this flat tire?

21 A. He had described he got into a sandy part of the
22 trail and tried to pump his tire but couldn't ride through
23 the trail.

24 Q. Did he tell you specifically where this trail was
25 located?

1 A. I believe he did.

2 Q. Do you have a recollection of him specifically
3 saying where he was riding?

4 A. Granite Mountain.

5 Q. You remember him saying he was riding at Granite
6 Mountain?

7 A. I believe so.

8 Q. How is it, Jacob, that when the Sheriff's officers
9 were asking you where he was riding, you gave a different
10 answer?

11 A. I am not sure.

12 Q. Do you remember being interviewed by the Sheriff's
13 officers about where Mr. DeMocker told you he was riding his
14 bike?

15 A. Yes.

16 Q. What did you tell them then?

17 A. That I believed he was on the Hassayampa loop.

18 Q. Right. You didn't tell them he was at Granite
19 Mountain, did you?

20 A. No.

21 Q. Do you really remember Mr. DeMocker telling you
22 where he was riding his bike?

23 A. Not really.

24 Q. At some point in time after the evening of July
25 the 2nd, did Mr. DeMocker tell you where he had been riding

1 his bike?

2 A. I believe so, yes.

3 Q. When was that?

4 A. Maybe the day after or a couple days after.

5 Q. Okay. And what did he tell you at that point in
6 time?

7 A. That he had parked at the Love Lane loop, and that
8 is where he accessed the trail he was on.

9 Q. Did he tell you he had parked at the Love Lane
10 loop at the dinner table that night?

11 A. I don't remember him saying that, no.

12 Q. You had been dating Charlotte for what, six months
13 at this point, approximately; is that correct?

14 A. Correct.

15 Q. Had you observed Mr. DeMocker going exercising on
16 previous occasions?

17 A. Yes.

18 Q. How often would he exercise?

19 A. Every day.

20 Q. And when he exercised, did he usually run or ride
21 his bike or what?

22 A. Usually he would run and do a workout at the
23 fitness center.

24 Q. What type of workout would he do at the fitness
25 center?

1 A. I am not sure.

2 THE COURT: It is a bit after 12:00.

3 MR. BUTNER: I have about one more question,
4 Judge.

5 THE COURT: Go ahead. Let's have you finish.

6 BY MR. BUTNER:

7 Q. So was this the longest workout you had ever seen
8 Mr. DeMocker do?

9 A. Yes.

10 Q. By approximately how much time?

11 A. Approximately two hours.

12 MR. BUTNER: Now would be a good time, Judge.

13 THE COURT: Remember the admonition, and since
14 we are starting off after 12:00, let's resume at about 1:25.
15 That would give you enough time to get your lunches. Please
16 remember the admonition in the meantime.

17 Mr. Janusek, you may step down in the
18 meantime. Watch your step, please.

19 (Whereupon, the jury exits the courtroom.)

20 (Whereupon, a recess was taken at 12:05 p.m.
21 to resume at 1:25 p.m. of the same day.)

22

23

24

25

JUNE 8, 2010
1:35 P.M.

JURY TRIAL

(Whereupon, the jury enters the courtroom.)

THE COURT: The record reflects the presence of the defendant, defense team, prosecutors, as well Mr. Janusek is still on the stand.

Mr. Butner.

MR. BUTNER: Thank you, Judge.

DIRECT EXAMINATION RESUMED

BY MR. BUTNER:

Q. Jacob, let's back up for just a moment. You mentioned that just when you were going to sit down to eat dinner, Mr. DeMocker said he had to leave?

A. Correct.

Q. What did he say again?

A. He had gotten a phone call, I believe a voice mail, on his cell phone from his business partner saying he left his computer on.

Q. Did he say his business partner's name?

A. I can't recall.

Q. Did you know his business partner's name?

A. John.

Q. Had you met John?

A. Yes.

1 Q. When had you met John?

2 A. Maybe a couple weeks before.

3 Q. Down at the UBS office?

4 A. Correct.

5 Q. So Mr. DeMocker left for a little bit?

6 A. Yes.

7 Q. And came back right?

8 A. Yes.

9 Q. Okay. And then when he came back, was that when
10 he mentioned that he had received a voice mail from Ruth
11 Kennedy?

12 A. Yes.

13 Q. So he didn't say anything about the voice mail by
14 Ruth Kennedy before he left?

15 A. I don't believe so.

16 Q. Speaking of voice mail from Ruth Kennedy, we
17 touched upon earlier whether you -- when you and Charlotte
18 were playing video games earlier, before you went to Safeway
19 or before you went to the swimming pool, whether you had
20 noticed that any telephone calls had come into the DeMocker
21 residence. Do you remember that?

22 A. I do.

23 Q. And did you know where their telephone was
24 located?

25 A. Yes. It was located on the counter that separated

1 the kitchen from the dining area.

2 Q. Did they have a -- were you able to leave voice
3 mail on that telephone?

4 A. My understanding was yes.

5 Q. Was that the same counter where you were supposed
6 to put your cell phone while you were eating dinner?

7 A. Yes.

8 Q. So, anyway, Mr. DeMocker left for a few minutes.
9 You said approximately five minutes?

10 A. Correct.

11 Q. And then he came back?

12 A. Yes.

13 Q. Had you and Charlotte started eating at that
14 point?

15 A. Yes.

16 Q. Did he rejoin you at the table?

17 A. Yes.

18 Q. And is that when he told you about the call from
19 Ruth Kennedy?

20 A. Yes.

21 Q. What did he say?

22 A. That he had a voice mail from Ruth Kennedy, and it
23 stated she was concerned about Carol. They were on the phone
24 talking, and all of a sudden she said, "Oh, no" and the line
25 went dead.

1 Q. And so what did Mr. DeMocker say about that?

2 A. He had asked if Charlotte or I had heard anything
3 from Carol in the last couple of hours.

4 Q. And what did you say?

5 A. Charlotte checked her phone and said that not in
6 the last couple hours.

7 Q. Okay. And so what did Mr. DeMocker do at that
8 point?

9 A. Sorry?

10 Q. What did Mr. DeMocker do at that point? Did he do
11 anything or say anything?

12 A. He began to make some phone calls.

13 Q. Were you able to hear who he was calling?

14 A. No.

15 Q. And what about you and Charlotte? Did you
16 continue to eat dinner?

17 A. We tried to call Carol's cell phone -- or
18 Charlotte tried to call Carol's cell phone. I'm sorry.

19 Q. Was she able to reach Carol's cell phone?

20 A. No.

21 Q. Do you know how many times she tried?

22 A. I don't.

23 Q. Did you continue to eat your dinner, though, at
24 that point?

25 A. Yes.

1 Q. Was Mr. DeMocker eating dinner?

2 A. No.

3 Q. What had he done?

4 A. He was on the phone.

5 Q. Did he say anything about why he wasn't eating his
6 dinner?

7 A. He wasn't really hungry after his bike ride.

8 Q. Is that what he said?

9 A. Yes.

10 Q. So you don't know who he was on the phone to?

11 A. No, I don't.

12 Q. Or "with" would be a better way of putting it.

13 And what were you and Charlotte doing
14 then?

15 A. We started to play video games again.

16 Q. So you had finished dinner?

17 A. Yes.

18 Q. Did Mr. DeMocker finish his dinner?

19 A. I don't recall.

20 Q. And what time is it now, approximately?

21 A. Approximately 11:30.

22 Q. Okay. So you have just finished dinner at about
23 11:30?

24 A. Yes.

25 Q. And were you concerned about Charlotte's mother,

1 Carol?

2 A. Yes.

3 Q. So what did you guys do?

4 A. I suggested calling both emergency rooms in
5 Prescott and Prescott Valley, and ask if they had any
6 patients under the name of Carol Kennedy or Jim Knapp.

7 Q. And did you guys do that?

8 A. Yes.

9 Q. And what did you find out, if anything?

10 A. That they did not have any patients under those
11 names.

12 Q. And did you talk to Mr. DeMocker about this?

13 A. Yes.

14 Q. What did he say? What did he have to say about
15 it?

16 A. He expressed some concern.

17 Q. So what did he say you should do, if anything?

18 A. I don't really understand. I'm sorry.

19 Q. There is the three of you there talking about
20 where Carol is, or what is going on with Carol Kennedy;
21 right?

22 A. Correct.

23 Q. Did Mr. DeMocker have any ideas about what you
24 should do?

25 A. We talked about going and checking on her.

1 Q. Whose idea was that?

2 A. I am not sure if it was mine or Steven's.

3 Q. Okay. And so was Mr. DeMocker going to go and
4 check on her?

5 A. No.

6 Q. What did he say about going and checking on her?

7 A. He felt that it would have been a little awkward
8 if she was on a date with another guy.

9 Q. Is that what he said?

10 A. Yes.

11 Q. So did he have any suggestions?

12 A. That Charlotte and I go and check.

13 Q. So it was his idea that you and Charlotte go out
14 and check on her?

15 A. Yes.

16 Q. And so did you guys do that?

17 A. Yes.

18 Q. Tell us how that came about.

19 A. That we go out and check?

20 Q. Right. What did you do?

21 A. We got dressed, got into Charlotte's car and drove
22 out to Bridle Path.

23 Q. And did Mr. DeMocker give you any or Charlotte any
24 instructions on what you should do when you went out there?

25 A. He wanted us to call him as we were pulling up to

1 the house and to be on the phone with him as we were checking
2 the house.

3 Q. Did he tell you why he wanted that?

4 A. Just to be safe. If there were any cars that we
5 didn't recognize or anything out of the ordinary -- anything
6 out of the ordinary, to let him know and to call the police.

7 Q. Okay. And how far a drive is it from Alpine
8 Meadows to the Bridle Path address?

9 A. I believe it is 20, 25 minutes.

10 Q. Is that how long it took you to get out there?

11 A. Yes.

12 Q. So approximately what time did you arrive out at
13 Bridle Path?

14 A. Close to midnight, I believe.

15 Q. Okay. I think this is still -- I am going to put
16 this back up so we kind of have a map as a frame of
17 reference.

18 So you think it was close to midnight
19 when you got out there. And Charlotte was driving; right?

20 A. Yes.

21 Q. And as you pulled up to the Bridle Path residence,
22 was Charlotte on her phone?

23 A. Yes.

24 Q. And what did you see?

25 A. We saw police lights as we neared Miss Kennedy's

1 residence, and caution tape.

2 Q. Okay. And so what did you guys do?

3 A. Charlotte had relayed to Steve what we saw, and we
4 pulled up to the house.

5 Q. Okay. And when you pulled up to the house, did
6 you stop outside the residence there?

7 A. Yes.

8 Q. What took place when you stopped?

9 A. Detectives came on both sides of the car and had
10 let us know that Carol had passed.

11 Q. And when Charlotte heard that information, what
12 did she do?

13 A. She began to cry.

14 Q. Was she on the phone with her father at the time?

15 A. She had dropped the phone.

16 Q. Do you remember the detectives telling you how
17 Carol had died at that point in time?

18 A. They had stated they were not sure whether it was
19 an accident or if it was foul play.

20 Q. Did they say anything more specific than that?

21 MR. SEARS: Calls for hearsay.

22 THE COURT: Sustained.

23 BY MR. BUTNER:

24 Q. So, Charlotte dropped the phone, and what did you
25 do then?

1 was that you passed the phone to?

2 A. I do not.

3 Q. And did Steve, apparently, talk on the phone or a
4 little bit with the police officer?

5 A. I am not sure. I went to console Charlotte.

6 Q. And when you went to console Charlotte, what took
7 place at that point?

8 A. She was still crying. One of the detectives had
9 asked to question me.

10 Q. Detective asked to question you?

11 A. Yes.

12 Q. Do you remember who that was?

13 A. I believe it was Sergeant Huante.

14 Q. Did you talk to Detective Sergeant Huante?

15 A. Yes.

16 Q. What did you tell him?

17 A. That Mr. DeMocker was on a bike ride at the time,
18 and had talked about what Charlotte and I did that day.

19 Q. Okay. Did Sergeant Huante ask you where
20 Mr. DeMocker was riding his bike?

21 A. Yes.

22 Q. What did you tell him?

23 A. That he was on the Hassayampa loop.

24 Q. At that point you thought he was on the Hassayampa
25 loop; right?

1 A. Correct.

2 Q. Did a detective talk with Charlotte for a while,
3 too?

4 A. I don't know.

5 Q. You were busy with Sergeant Huante?

6 A. Yes.

7 Q. Did Mr. DeMocker come out to the scene?

8 A. Yes.

9 Q. About what time was that, if you know?

10 A. I have no idea.

11 Q. You don't know how long you guys were even out
12 there before he got there?

13 A. No.

14 Q. And when Mr. DeMocker arrived at the scene, what
15 did he do?

16 A. I believe was talking with detectives.

17 Q. And did he go and comfort Charlotte?

18 A. Yes.

19 Q. Did you have any conversation with Mr. DeMocker
20 out there at the scene?

21 A. I don't remember any -- any conversation, no.

22 Q. So do you have any idea how long you were out at
23 the crime scene there, Jacob?

24 A. Not without guessing, no.

25 Q. Don't guess. At some point in time you left the

1 crime scene, though; right?

2 A. Yes.

3 Q. Were you interviewed at the crime scene?

4 A. Yes.

5 Q. And who interviewed you at the crime scene?

6 A. Sergeant Huante.

7 Q. Anybody else?

8 A. No.

9 Q. So you were interviewed by Sergeant Huante at the
10 crime scene. Were you interviewed someplace else by someone
11 else?

12 A. Yeah. I was also taken to the Sheriff's
13 department.

14 Q. Did you ride in a police vehicle to the Sheriff's
15 department?

16 A. No. I believe it was just the commander's car.

17 Q. So you rode with Commander Mascher?

18 A. Correct.

19 Q. Was it just you, or did somebody go with you
20 besides Commander Mascher?

21 A. It was just the two of us.

22 Q. You and Commander Mascher?

23 A. Correct.

24 Q. And do you remember what you talked about on the
25 way to the Sheriff's office?

1 A. I don't.

2 Q. When you got to the Sheriff's office, did
3 Commander Mascher interview you?

4 A. Yes.

5 Q. Basically, what did you tell him?

6 A. The same thing I told Sergeant Huante, talked
7 about the events of the day.

8 Q. And did you tell Commander Mascher about going by
9 the UBS office and dropping off cookies?

10 A. I believe so.

11 Q. And did you tell him about Steve leaving for his
12 trail ride or run?

13 A. Yes.

14 Q. Earlier in the day?

15 A. Yes.

16 Q. Before dinner time?

17 A. Yes.

18 Q. And did you tell him where you thought Steve was
19 going running or riding his bike?

20 A. I did.

21 Q. What did you tell him?

22 A. That I thought he was on the Hassayampa loop.

23 Q. And you have thought about this a lot; right,
24 since that time?

25 A. Correct.

1 MR. SEARS: Leading.

2 THE COURT: Sustained.

3 MR. SEARS: Move to strike the answer.

4 THE COURT: Strike the answer. Jury is to
5 disregard it.

6 BY MR. BUTNER:

7 Q. Have you reviewed your transcripts a number of
8 times since these interviews?

9 A. Yes.

10 Q. Do you even know how many times you reviewed them?

11 A. No.

12 Q. Okay. Have you been able to figure out why you
13 told Commander Mascher that Mr. DeMocker was riding on the
14 Hassayampa loop?

15 A. Because it was part of his daily routine.

16 Q. Had you ever known Mr. DeMocker to go riding his
17 bicycle out by Granite Mountain prior to this date of July
18 2nd?

19 A. No.

20 Q. And basically you just assumed he went to his
21 usual place?

22 A. Yes.

23 Q. Did you indicate to Commander Mascher where
24 Mr. DeMocker went after he completed his trail ride?

25 A. I am not understanding the question.

1 Q. Did Commander Mascher ask you if you knew where
2 Mr. DeMocker went after he was done riding his bicycle?

3 MR. SEARS: Leading.

4 THE COURT: Overruled.

5 THE WITNESS: Yes.

6 BY MR. BUTNER:

7 Q. Okay. What did you tell him in response to that
8 question?

9 A. That he had gone to his office to turn his
10 computer off.

11 Q. Okay. Were you aware of Mr. DeMocker going any
12 other place besides his office to turn off his computer?

13 A. No.

14 Q. When you went through that intersection there at
15 Gail Gardner and Iron Springs when you were on your way to
16 the Safeway --

17 A. Yes.

18 Q. -- you indicated that you saw Mr. DeMocker's
19 vehicle. You thought you saw Mr. DeMocker's vehicle when you
20 went through that intersection; right?

21 A. Right.

22 Q. Did you point that out to Charlotte when you went
23 by?

24 A. I did.

25 Q. How long were you at the Sheriff's office that

1 night, and I guess it turned out to be in the early morning
2 hours, too, of July the 3rd? How long were you there? Do
3 you know?

4 A. Approximately four hours.

5 Q. So what time did you get to leave the Sheriff's
6 office?

7 A. 5:00 a.m.

8 Q. And that was 5:00 a.m. then on July the 3rd;
9 right?

10 A. Correct.

11 Q. And were you and Charlotte together when you were
12 there?

13 A. Yes.

14 Q. In fact, did Commander Mascher interview you and
15 Charlotte together at some point?

16 A. Yes.

17 Q. When you left the Sheriff's office, where did you
18 guys go?

19 A. We went to Renee Girard's house.

20 Q. What was the reason you went to Renee Girard's
21 house?

22 A. We were not able to go back to the Alpine Meadows
23 house, was my understanding.

24 Q. What was that understanding based on?

25 A. They were still conducting the search warrant.

1 Q. So police were over at the Alpine Meadows
2 residence executing a search warrant?

3 A. Correct.

4 Q. And just to clarify, who is Renee Girard? What is
5 her relationship to this situation?

6 A. Steven's girlfriend.

7 Q. When did you first meet Renee Girard?

8 A. I don't recall.

9 Q. Do you recall approximately how long you had known
10 her prior to the July 2nd homicide?

11 A. It had been a few months.

12 Q. And had you been around her much?

13 A. Yes.

14 Q. Would you describe the circumstances under which
15 you were around her company in the months leading up to the
16 homicide?

17 A. Having dinner together at the Alpine Meadows
18 residence.

19 Q. So she would be over there for dinner at Steven
20 DeMocker's house, as well as you?

21 A. Correct.

22 Q. Was she there on a regular basis, to your
23 understanding?

24 A. Yes.

25 Q. And how did you get to Renee Girard's house that

1 morning?

2 A. She picked Charlotte and I up at the station.

3 Q. In her vehicle?

4 A. Yes.

5 Q. Do you remember what kind of vehicle she had?

6 A. I do not.

7 Q. Do you remember what color it was?

8 A. I believe it was gold.

9 Q. And where did she take you?

10 A. To her house.

11 Q. And once you got to her house, what did you do?

12 A. Charlotte and I slept.

13 Q. Were you very tired?

14 A. Yes.

15 Q. And what time did you guys -- what time did you
16 get up?

17 A. I had been up on and off throughout the day, so it
18 would be hard to give an exact time.

19 Q. At some point in time did you get up to eat?

20 A. Yes.

21 Q. Approximately what time?

22 A. Around nine o'clock.

23 Q. 9:00 a.m.?

24 A. Yes.

25 Q. And did you go back to sleep, or did you stay up

1 or what?

2 A. Stayed up a little bit, called into work and
3 called my parents.

4 Q. And then did you remain at Renee Girard's house?

5 A. Yes.

6 Q. Until what time?

7 A. Approximately 4:30, 5:00 p.m.

8 Q. And then where did you go?

9 A. Back to the Alpine Meadows residence.

10 Q. And when you went back to the Alpine Meadows
11 residence, who was with you?

12 A. It was Charlotte and Renee and I.

13 Q. And where was Mr. DeMocker?

14 A. I do not know.

15 Q. Did he ultimately get to the Alpine Meadows
16 residence?

17 A. Yes.

18 Q. Approximately what time did he arrive?

19 A. 5:30 p.m.

20 Q. Did the Sheriff's office -- do the Sheriff's
21 deputies return to the Alpine Meadows residence?

22 A. Yes.

23 Q. About what time did they return?

24 A. Approximately 6:00 p.m.

25 Q. Shortly after Mr. DeMocker arrived?

1 A. Yes.

2 Q. And when they got there, the deputies at 6:00
3 p.m., describe for us, if you would, please, what happened?

4 A. Steven, Charlotte and I were upstairs in the
5 kitchen, and we had heard a noise downstairs. I ran down the
6 stairs to check the garage and --

7 Q. Is that where you heard the noise?

8 A. Yes.

9 Q. Okay. And when you got down there, what happened?

10 A. There were deputies in the garage, and one of them
11 had asked me to get Mr. DeMocker.

12 Q. Do you remember if there were any vehicles parked
13 in the garage at that point?

14 A. Not in the garage. I believe Miss Girard's car
15 was partially in the garage.

16 Q. Do you know what vehicle that was?

17 A. I don't recall.

18 Q. Do you remember what color it was?

19 A. It was gold.

20 Q. Light colored gold or dark gold?

21 A. Light.

22 Q. Was it a passenger vehicle of some sort as
23 opposed -- was it like a truck or a car or an SUV?

24 A. It was a car.

25 Q. Okay. It was a car. So it was part way parked in

1 the garage?

2 A. Yes.

3 Q. Were there any other vehicles in the garage?

4 A. No.

5 Q. I'm sorry?

6 A. There were not.

7 Q. And were the deputies searching when you got down
8 there?

9 A. I believe so, yes.

10 Q. Did they say anything to you?

11 MR. SEARS: Calls for hearsay.

12 THE COURT: Sustained.

13 BY MR. BUTNER:

14 Q. So the deputies were searching the garage when you
15 got down there; is that correct?

16 A. Correct.

17 Q. Did they go anyplace else besides the garage?

18 A. I don't remember.

19 Q. Did any of them come upstairs to meet with you and
20 Mr. DeMocker and Charlotte?

21 A. Yes.

22 Q. Do you remember how many?

23 A. I don't remember. I do remember Sergeant Huante
24 upstairs, though.

25 Q. Okay. Did you have a conversation with Sergeant

1 Huante?

2 A. Yes.

3 Q. Were the deputies looking for anything in
4 particular, to your knowledge?

5 MR. SEARS: Leading. Foundation. Calls for
6 hearsay. Speculation.

7 THE COURT: Sustained.

8 BY MR. BUTNER:

9 Q. Did you have any idea what the deputies were
10 looking for?

11 MR. SEARS: Calls for speculation.
12 Foundation.

13 THE COURT: Sustained.

14 MR. BUTNER: It is a yes or no question,
15 Judge.

16 THE COURT: Sustained.

17 BY MR. BUTNER:

18 Q. What did you do while the deputies were searching
19 the garage?

20 A. Charlotte and I were sitting upstairs.

21 Q. Okay.

22 A. At the kitchen table.

23 Q. Where was Mr. DeMocker?

24 A. Downstairs.

25 Q. Was he all the way down the stairs in the garage

1 with the deputies?

2 A. He was sitting on the stairs.

3 Q. Was the door to the garage open while he was
4 sitting there on the stairs?

5 A. I'm sorry?

6 Q. The stairs go down from the condominium to where
7 the garage is located; right?

8 A. Correct.

9 Q. And Mr. DeMocker, if I understood your testimony,
10 was seated on those stairs?

11 A. Correct.

12 Q. First of all, where was he seated on the stairs?
13 Down at the bottom, up at the top, or someplace in the
14 middle?

15 A. More down towards the bottom.

16 Q. Were you able to tell when he was seated more down
17 toward the bottom whether the door was open or closed to the
18 garage?

19 A. I was not able to, no.

20 Q. Could you hear the deputies down there searching
21 and talking and whatever they were doing?

22 A. I can't remember now.

23 Q. How long were the deputies down searching in the
24 garage?

25 A. Approximately an hour.

1 Q. And did they come up and search in the house also?

2 A. Yes.

3 Q. And was it the same amount of time? I mean, were
4 they up in the house and the garage at the same time?

5 A. Yes.

6 Q. So they were there about an hour?

7 A. Correct.

8 Q. Did you help them search for anything?

9 A. No.

10 Q. Did you get in a bit of confrontation with the
11 deputies at that time?

12 A. Yes.

13 Q. What was that about?

14 A. Sergeant Huante had asked Charlotte and I if we
15 knew anything about a golf head sock cover. We had stated
16 that I didn't know anything about it, hadn't seen it, and he
17 continued to pressure us about it.

18 Q. So what did you do?

19 A. Just told him that we had no idea where it was,
20 hadn't heard anything about it.

21 Q. Did you tell him to back off or something like
22 that?

23 A. It's possible.

24 Q. Were you upset that he was, in essence, hassling
25 Charlotte?

1 A. Yes.

2 Q. So they searched for an hour. I guess they left
3 at some point; right?

4 A. Yes.

5 Q. Do you know approximately what time the deputies
6 left?

7 A. Around 7:30.

8 Q. Okay. Did you tell the deputies that you knew
9 anything about this golf head cover or golf head sock?

10 A. I told them that I did not know anything.

11 Q. So they left at about 7:30 p.m., and what took
12 place after that?

13 A. Afterwards we sat around a little bit.
14 Mr. DeMocker had made a couple of phone calls.

15 Q. Do you know who Mr. DeMocker called? Could you
16 tell?

17 A. I do not.

18 Q. Was he using his cell phone?

19 A. I think it was the house phone.

20 Q. Okay. And did you have any conversation about the
21 deputies and what they were searching for?

22 A. We did.

23 Q. What was that conversation?

24 A. The golf head sock cover was found after they had
25 left.

1 Q. How do you know it was found after they left?

2 A. Mr. DeMocker had stated that it was in Renee's
3 car.

4 Q. Who did he say that to?

5 A. I think it was a general statement.

6 Q. Were you present when he said it?

7 A. Yes.

8 Q. This was upstairs in the condominium there?

9 A. Yes.

10 Q. Thinking back, can you recall specifically what
11 Mr. DeMocker said about the golf head cover?

12 MR. SEARS: Foundation as to date, time.

13 THE COURT: Are you talking about the same
14 conversation, the same date?

15 THE WITNESS: Yes.

16 THE COURT: Overruled.

17 THE WITNESS: That the golf head sock must
18 have been blown into the car by the wind.

19 BY MR. BUTNER:

20 Q. The golf head sock must have been blown into the
21 car by the wind? Was this Renee's car?

22 A. Yes.

23 Q. Was Renee present?

24 A. I cannot remember.

25 Q. Do you recall any wind blowing that day?

1 A. I remember a slight breeze.

2 Q. And had Renee moved her car all the way into the
3 garage at any point in time?

4 A. I cannot remember, no.

5 Q. Do you remember seeing her car all the way into
6 the garage that day?

7 A. I can't be sure.

8 Q. When you saw Renee's car, where was it relative to
9 the garage?

10 A. Partially in the garage.

11 Q. Did Mr. DeMocker say where the golf head sock
12 cover was when it blew into Renee Girard's car?

13 A. No.

14 Q. But he said he had found it?

15 A. Yes.

16 Q. Did he say what he was going to do with it?

17 A. He didn't know whether or not to turn it into the
18 police or give it to his lawyer.

19 Q. And this conversation all took place on July the
20 3rd; is that right?

21 A. Correct.

22 Q. About 7:30 or so in the evening?

23 A. Yes.

24 Q. Right after the police had left?

25 A. Yes.

1 Q. So the police came back. They searched. They
2 left. That evening after they left and after this
3 conversation took place, what did you do at that point,
4 Jacob?

5 A. Charlotte, Renee and I drove out to Bridle Path to
6 retrieve Charlotte's car.

7 Q. And did you do that?

8 A. Yes.

9 Q. And where did you take the car?

10 A. Back to the Alpine Meadows residence.

11 Q. And then what took place once you got back to
12 Alpine Meadows?

13 A. We ate dinner.

14 Q. Did you have any further conversation with
15 Mr. DeMocker about what had happened out at Bridle Path?

16 A. I do not remember.

17 Q. Don't remember any further conversation?

18 A. Correct.

19 Q. You continued to date Charlotte for a while; is
20 that correct?

21 A. Correct.

22 Q. How long did you date her?

23 A. After the incident, about another five months.

24 Q. And were you still going out with Charlotte when
25 the memorial service was held for her mother?

1 A. Yes.

2 Q. You still didn't have your driver's license at
3 that point; right?

4 A. Correct.

5 Q. Okay. Did you ever accompany Charlotte on any
6 trips down to Phoenix for any reasons?

7 A. Yes. We did go down to pick up her cousin -- one
8 of her cousins for the memorial service.

9 Q. When was that, approximately?

10 A. Just before the memorial service. I am not sure
11 on a date.

12 Q. Approximately how long after the murder of Carol
13 Kennedy was the memorial service for her?

14 A. Three weeks.

15 Q. And where was the memorial service held?

16 A. In Sedona.

17 Q. And so you went down to the airport before the
18 memorial service?

19 A. Correct.

20 Q. On the same day of it, or a day before or what?

21 A. It was a few days before.

22 Q. Do you remember which cousin you were picking up?

23 A. I do not.

24 Q. How did you get down there?

25 A. Charlotte drove.

1 Q. What vehicle did she drive?

2 A. It was Carol's car.

3 Q. What kind of car did Carol have?

4 A. I believe it was an Acura.

5 Q. Do you know what kind of Acura?

6 A. It was an SUV.

7 Q. Do you remember the color?

8 A. Tan.

9 Q. So you went down to Phoenix in this Acura SUV, and
10 what time of day did you go down there?

11 A. Early afternoon.

12 Q. And before picking up the cousin at the airport,
13 did you make any other stops?

14 A. We had stopped at some malls to get some clothes
15 for Charlotte.

16 Q. So you did some shopping for Charlotte?

17 A. Yes.

18 Q. And did you get anything else down there?

19 A. We also picked up a GPS for Steven.

20 Q. Okay. Where did you get this GPS unit?

21 A. REI.

22 Q. Do you remember where the REI store was located?
23 What town or area?

24 A. Tempe.

25 Q. And did you have an understanding as to why you

1 were picking up this GPS unit for Steven at the REI in Tempe?

2 A. He was planning to make a couple of trips up to
3 Colorado.

4 Q. Did he tell you anything else why he wanted the
5 GPS unit?

6 A. That was the only reason that I heard.

7 Q. At some point in time did you find out that Steven
8 was contemplating fleeing?

9 A. Yes.

10 MR. SEARS: Leading.

11 THE COURT: Overruled.

12 BY MR. BUTNER:

13 Q. How was it that you found out that he was getting
14 ready to flee?

15 A. I overheard a conversation that he didn't want
16 Charlotte and Katie to see him through a jail cell, and he
17 didn't want to die in jail.

18 Q. And was this before the time of the memorial
19 service or after?

20 A. I believe it was after.

21 Q. Do you know how much after the memorial service?

22 A. It was around August.

23 Q. And where were you when you overheard this
24 conversation?

25 A. I was in Charlotte's room.

1 Q. At the Alpine Meadows condominium?

2 A. Correct.

3 Q. Where was Steven when he was making these
4 statements?

5 A. I am not sure exactly where.

6 Q. Was he in the house someplace at Alpine Meadows?

7 A. Yes.

8 Q. Were you in the same room with him?

9 A. No.

10 Q. Did you just happen to overhear it, or were you
11 trying to listen for it or what?

12 A. I just overheard it.

13 Q. Do you know who he was speaking with?

14 A. I do not.

15 Q. Was he on the phone?

16 A. I don't think so.

17 Q. So what did he say about not wanting Charlotte or
18 Katie to see him in a jail cell?

19 A. That's all I remember.

20 Q. Did he say he was going to do something in order
21 to prevent that?

22 A. He was planning on running.

23 Q. Did he say where he was going to run to?

24 A. Not to me.

25 Q. Did you hear him say where he was planning on

1 running to?

2 A. No.

3 Q. Did you hear him say what he was doing in
4 preparation for this?

5 A. I'm sorry?

6 Q. Was he taking any steps in preparation for
7 running?

8 A. He had bought a motorcycle.

9 Q. Where was the motorcycle at?

10 A. At the Alpine Meadows residence.

11 Q. What kind of motorcycle was it?

12 A. It was a BMW.

13 Q. Okay. And what other steps had he taken besides
14 purchasing the motorcycle?

15 A. He had asked Charlotte to gather camelbacks,
16 hydration packs.

17 Q. That is those kinds of backpacks that have water
18 in them?

19 A. Correct.

20 Q. And did she do that?

21 A. To my understanding, yes.

22 Q. Do you know how many she got?

23 A. No.

24 Q. Any other steps?

25 A. Not that I am aware of.

1 Q. Had he done anything so that he could remain in
2 communication with friends and family members while he was
3 running?

4 MR. SEARS: Leading.

5 THE COURT: Sustained.

6 BY MR. BUTNER:

7 Q. Were you aware of any other steps that he had
8 taken besides the motorcycle purchase and asking Charlotte to
9 get these camelbacks?

10 A. There was the purchase of pay-as-you-go phones.

11 Q. You call these GoPhones?

12 A. Correct.

13 Q. When did that take place?

14 A. Around August, I believe.

15 Q. Around this same time?

16 A. Correct.

17 Q. Who purchased the phones? Do you know?

18 A. I am not sure.

19 MR. SEARS: Foundation.

20 THE COURT: To the extent there was an answer,
21 I will strike it. Sustained on foundation.

22 BY MR. BUTNER:

23 Q. Okay. He had purchased these GoPhones. Did
24 Mr. DeMocker purchase the GoPhones?

25 MR. SEARS: Foundation.

1 THE COURT: Sustained.

2 MR. SEARS: Speculation.

3 BY MR. BUTNER:

4 Q. Do you have any knowledge as to who purchased the
5 GoPhones?

6 A. I do not.

7 Q. Did you see anybody in possession of these
8 GoPhones sometime in August?

9 A. I did.

10 Q. Who was in possession of the GoPhones?

11 A. Charlotte.

12 Q. How many did she have?

13 A. Two.

14 Q. Who were they for?

15 MR. SEARS: Foundation.

16 THE COURT: Sustained.

17 BY MR. BUTNER:

18 Q. Did you know who the GoPhones were for?

19 A. It was for Charlotte.

20 Q. And who else?

21 A. Steve.

22 Q. And did you hear about any other preparations for
23 Mr. DeMocker to run?

24 A. I don't recall any.

25 Q. Were you aware of Mr. DeMocker hiding any objects

1 anyplace in preparation for running?

2 MR. SEARS: Leading.

3 THE COURT: Sustained.

4 BY MR. BUTNER:

5 Q. We talked about the purchase of the motorcycle,
6 and we talked about Charlotte getting the camelbacks or
7 hydration packs, right, and we talked about the purchase of
8 pay-as-you-go telephones. And Charlotte was in possession of
9 two of those; is that right?

10 A. Correct.

11 Q. And in addition to those steps, did you see any
12 other evidence around the DeMocker residence of any other
13 preparations to flee?

14 MR. SEARS: Foundation.

15 THE COURT: It is a yes or no answer.

16 Overruled. You may respond yes or no.

17 THE WITNESS: No.

18 BY MR. BUTNER:

19 Q. Had Mr. DeMocker made any statements to you or
20 statements to other people that you overheard about his plans
21 for fleeing?

22 MR. SEARS: Asked and answered.

23 THE COURT: Overruled.

24 THE WITNESS: Can you repeat the question?

25 MR. BUTNER: Right.

1 Q. Had Mr. DeMocker made any statements to you or had
2 you overheard any other statements by Mr. DeMocker to other
3 people about his plans to flee?

4 A. I can't remember any other statements.

5 Q. Did you ever go out on the Hassayampa golf course
6 looking for things that Mr. DeMocker had left out there?

7 A. No.

8 Q. Now, you knew about these preparations by
9 Mr. DeMocker. Charlotte was still your girlfriend; right?

10 A. Correct.

11 Q. Was she upset?

12 A. Yes.

13 Q. Did you ever talk to Mr. DeMocker about Charlotte
14 being upset because he was planning on fleeing?

15 A. I don't remember any conversation about that.

16 Q. Again, these things that you recall, they were in
17 August of 2008; is that right?

18 A. Correct.

19 Q. Do you recall any additional plans after the month
20 of August of 2008?

21 A. I do not.

22 Q. Did you ever have any conversations with
23 Mr. DeMocker about his divorce from Carol Kennedy?

24 MR. SEARS: Relevance.

25 THE COURT: Overruled, but it is a yes or no

1 answer only.

2 THE WITNESS: Yes.

3 BY MR. BUTNER:

4 Q. When did those conversations take place?

5 A. Throughout the process of the divorce.

6 Q. During the last month leading up to Carol
7 Kennedy's death on July the 2nd of the year 2008 -- in other
8 words, in the preceding month of June of 2008, do you recall
9 having any conversations with Mr. DeMocker about what had
10 taken place in his divorce proceedings with Carol Kennedy?

11 MR. SEARS: Relevance.

12 THE COURT: Overruled. You may answer. Again
13 yes or no answer.

14 THE WITNESS: Yes.

15 BY MR. BUTNER:

16 Q. What did he say to you about his divorce?

17 MR. SEARS: Foundation as to time and place.

18 THE COURT: Sustained.

19 BY MR. BUTNER:

20 Q. Do you have any recollection of a specific
21 conversation with Mr. DeMocker about what had taken place in
22 his divorce?

23 A. I do. Over dinner we would discuss --

24 MR. SEARS: I think that calls for a yes or no
25 answer, Your Honor.

1 THE COURT: Ask another question.

2 BY MR. BUTNER:

3 Q. You indicated you do have a specific recollection.
4 When did this conversation take place, approximately?

5 A. In June.

6 Q. Of 2008?

7 A. Correct.

8 Q. And where were you at when you engaged in this
9 conversation with Mr. DeMocker?

10 A. At the Alpine Meadows residence.

11 Q. And what were the circumstances of the
12 conversation?

13 A. The happenings in court of the details of the
14 divorce.

15 Q. Had the divorce been granted yet?

16 A. I am not sure.

17 Q. And what did Mr. DeMocker say?

18 A. That he was happy that things were finally coming
19 to an end.

20 Q. Did he say anything else?

21 A. I don't recall.

22 Q. Did he indicate why he was happy things were
23 finally coming to an end?

24 A. He was tired of spending money on court fees.

25 Q. Did he indicate whether he was tired of spending

1 money on anything else?

2 MR. SEARS: Leading.

3 THE COURT: Sustained.

4 BY MR. BUTNER:

5 Q. Did he say anything about Carol Kennedy in the
6 context of that conversation?

7 MR. SEARS: Leading.

8 THE COURT: Sustained.

9 BY MR. BUTNER:

10 Q. Did Mr. DeMocker ever express to you in the
11 context of that conversation his view about his current
12 financial circumstances?

13 MR. SEARS: Leading.

14 THE COURT: Overruled. You may answer, if you
15 can.

16 THE WITNESS: I can't really answer to that,
17 no.

18 BY MR. BUTNER:

19 Q. Do you understand what I asked?

20 A. Not really.

21 Q. That wasn't too good a question.

22 Did Mr. DeMocker -- this is while you
23 were staying or visiting his house off and on and having
24 dinner; is that correct?

25 A. Correct.

1 Q. You were having dinner there with Charlotte and
2 Mr. DeMocker; is that correct?

3 A. Correct.

4 Q. Anybody else at those dinners?

5 A. Renee would sometimes be at those dinners.

6 Q. So the four of you?

7 A. Yes.

8 Q. Did you ever hear, during this time frame,
9 Mr. DeMocker make any statements about his financial
10 circumstances and what they were like?

11 A. That he was struggling a little bit.

12 Q. Did he indicate to you what was causing him to
13 struggle a little bit?

14 A. The back and forth with court fees and paying
15 Carol's bills as well as his.

16 MR. BUTNER: Could I have just a moment,
17 Judge?

18 THE COURT: You may.

19 MR. BUTNER: Thank you. Thank you, Judge.

20 Q. Let's back up just a little bit. The time that
21 you overheard Mr. DeMocker making the statement about he
22 didn't want Charlotte and Katie to see him in jail so he was
23 thinking about fleeing, right, that was at the condo; right?

24 A. Correct.

25 Q. The Alpine Meadows residence; right?

1 A. Correct.

2 Q. Do you know who else was at the Alpine Meadows
3 condo at the time besides you, of course?

4 A. I am not entirely sure if Renee was there or not.

5 Q. You don't know if Charlotte was there?

6 A. Charlotte was there, yes.

7 Q. She was there?

8 A. Yes.

9 Q. And you don't know if Renee was there?

10 A. Correct.

11 Q. Was anybody else there, to your knowledge?

12 A. I don't remember anyone else.

13 Q. And when the detectives came and were searching
14 the garage and came up and were looking for this golf club
15 head cover, had you seen the golf club head cover?

16 A. No.

17 Q. Have you ever seen the golf club head cover?

18 A. No.

19 Q. When Mr. DeMocker left Alpine Meadows on the night
20 of the homicide on July 2nd and went to go turn off his
21 computer, right, how long was he gone?

22 A. Approximately five minutes.

23 Q. Did he leave any other times after that, to your
24 knowledge?

25 A. Not to my knowledge, no.

1 Q. Not until he came out to the crime scene?

2 A. Correct.

3 Q. When you were out there with Charlotte?

4 A. Correct.

5 Q. On July the 2nd, you and Charlotte were trying to
6 reach Mr. DeMocker by calling his cell phone; right? Is that
7 correct?

8 A. Yes.

9 Q. Do you know how many times Charlotte tried to
10 reach him?

11 A. It was more than once.

12 Q. And you had been around Mr. DeMocker for
13 approximately how long at that point in time?

14 A. Six months.

15 Q. Were you aware of what he did for a living?

16 A. Yes.

17 Q. What was that?

18 A. He was a financial advisor.

19 Q. Do you know what a financial advisor does?

20 A. Not really.

21 Q. Do you know what they work with, what kinds of
22 things they work with?

23 A. Stocks.

24 Q. Okay. And during that time frame, that six months
25 or so that you were around Mr. DeMocker prior to the time of

1 the homicide, had you ever seen Charlotte or anybody else
2 have difficulty in reaching him on his cell phone?

3 A. No.

4 Q. Did you observe any measures that Mr. DeMocker
5 took in regard to his cell phone?

6 A. Not understanding.

7 Q. You never saw anybody have difficulty reaching him
8 on his cell phone; is that right?

9 A. Right.

10 Q. And did you have an understanding as to why there
11 weren't problems reaching him?

12 A. He always kept a spare battery with him.

13 Q. Do you know where he kept it, or kept these spare
14 batteries?

15 A. I believe he had one in his car, one at the house
16 and one at his office, to my knowledge.

17 MR. BUTNER: Okay. I don't have any further
18 questions of this witness at this time, Judge. Thank you.

19 THE COURT: Thank you.

20 Mr. Sears.

21 MR. SEARS: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. SEARS:

24 Q. Jake, how are you?

25 A. All right.

1 Q. Good. Are you excited about school?

2 A. Yeah.

3 Q. What are you going to take?

4 A. I don't know yet.

5 Q. Plenty of time between now and August?

6 A. Yeah.

7 Q. Are you going to live at home or in the dorms?

8 A. Live at home.

9 Q. How is that working out?

10 A. Good.

11 Q. The police talked to you an awful lot about this
12 case in the last years.

13 A. Correct.

14 Q. You were interviewed a bunch of times since the
15 night Carol died, and a number of times since then?

16 A. Correct.

17 Q. One was in February on my birthday. Did you all
18 talk about my birthday?

19 A. I don't remember.

20 Q. And you've seen all of these transcripts of all of
21 these interviews, and you have had a chance to study these;
22 right?

23 A. The one in February was not included.

24 Q. Just in general terms, it sounds to me from what
25 you said here today and what you told the police all these

1 different times that you liked Steve?

2 A. Yes.

3 Q. He was always good to you?

4 A. Yes.

5 Q. And you liked his daughter for quite a while?

6 A. Very much.

7 Q. And you are still friends with Charlotte; right?

8 A. It is kind of difficult because of the case. We
9 haven't really been able to talk.

10 Q. But if it weren't for that you would want to be
11 friends with Charlotte?

12 A. Correct.

13 Q. There is nothing about your relationship with her,
14 apart from this terrible case, that is a problem; right?

15 A. Right.

16 Q. You have good thoughts about your relationship
17 with Charlotte, except as it affects this case. This is the
18 worse part of it; right?

19 A. Right.

20 Q. I have to assume that two years ago you were 16
21 years old; right?

22 A. Yes.

23 Q. This was the most unusual and most disturbing
24 thing that had ever happened to you up to that point; right?

25 A. Yes.

1 Q. Probably still today; right?

2 A. Yes.

3 Q. One of the things I've heard you say today and
4 before was that Steve was remarkably open around you and his
5 daughter; right?

6 A. Yes.

7 Q. He didn't hide things; did he?

8 A. No.

9 Q. For example, when he came to the table and you
10 said something about his scratches, he didn't try to hide
11 those scratches or cover them up; right? He talked to you
12 about them; right?

13 A. Correct.

14 Q. He told you exactly what happened and where they
15 came from; right?

16 A. Right.

17 Q. And you made some comment that they looked pretty
18 painful, and he agreed; right?

19 A. Yes.

20 Q. Was that the one on his arm that looked the worst,
21 or the one on his leg?

22 A. I don't remember which one was the worst.

23 Q. Pretty ugly, though?

24 A. Yes.

25 Q. And apparently from what Mr. Butner was asking

1 you, Steve was pretty open talking about his finances and
2 divorce to his daughter's 16-year-old boyfriend. That would
3 be dinner table conversation; right?

4 A. Yes.

5 Q. Did that make you feel uncomfortable?

6 A. A little bit.

7 Q. Did Steve talk about it endlessly in front of you
8 all?

9 A. Occasionally.

10 Q. Not all the time, though; right?

11 A. Right.

12 Q. And this business about Steve running away.
13 Apparently he was very open in front of everyone about what
14 was in his mind; right?

15 A. Right.

16 Q. He was not trying to hide from anybody; right?

17 A. Other than from getting arrested.

18 Q. Did he tell you that he wanted you to swear a
19 blood oath that you wouldn't tell anybody about this?

20 A. No.

21 Q. In fact, on that score, you know that Steve was
22 very, very worried about the way the police seemed to be
23 zeroing in on him that summer; right?

24 A. Yes.

25 Q. And in the three-and-a-half months between the

1 time that Carol died and the time that he was arrested, on
2 more than one occasion Steve, in your presence, said that he
3 was worried and upset about the way the police seemed to be
4 focusing on him; right?

5 A. Yes.

6 Q. And that he was afraid of being arrested and
7 wrongly accused; right?

8 A. Correct.

9 Q. That is what he was afraid about. You knew that;
10 right?

11 A. Yes.

12 Q. And that is why he was talking about running away;
13 right?

14 A. Yes.

15 Q. Not because he had killed Carol, but because he
16 was afraid of being falsely accused; right?

17 A. Right.

18 Q. You were concerned for Charlotte; right?

19 A. Yes.

20 Q. And you were concerned because if that is what
21 happened, Charlotte would have lost two parents; right?

22 A. Yes.

23 Q. And this is something that went on for a couple of
24 weeks in August that summer; is that right?

25 A. Yes.

1 Q. Two months later Steve is arrested. Do you know
2 where he was arrested?

3 A. In Phoenix.

4 Q. At his office; right?

5 A. Yes.

6 Q. Where he was supposed to be; right?

7 A. Yes.

8 Q. Sitting at his desk; right?

9 A. Yes.

10 Q. So he hadn't run away; correct?

11 A. Correct.

12 Q. You talked about this motorcycle. You know that
13 the police took Steve's car. In fact, have it to this very
14 day.

15 A. Yes.

16 Q. Steve needed something to get around on; right?

17 A. Yes.

18 Q. And Steve said in your presence that he had always
19 wanted a motorcycle, and maybe this was a good chance for him
20 to have one; correct?

21 A. Correct.

22 Q. He got a big shinny BMW motorcycle; right?

23 A. Yes.

24 Q. He talked about going camping in Colorado with
25 Renee?

1 A. Correct.

2 Q. The hydration packs, the camelbacks and some other
3 stuff, those would be some things that you would use if you
4 went camping; correct?

5 A. Correct.

6 Q. Not necessarily if you ran away. Wouldn't just be
7 for running away?

8 A. Right.

9 Q. Let's go back. I don't know what I would do
10 without these Post-its here. Jacob, I have got a lot to talk
11 to you about. Let's start at the first place.

12 Let's talk about the day that Carol died.
13 If I understand, your parents threw you out of your house the
14 night before; right?

15 A. Yes.

16 Q. And Steve took you in; right?

17 A. Correct.

18 Q. And Char's friend Presley was over that night. So
19 the morning of July 2nd, all of you got up at about what
20 time?

21 A. It was around ten o'clock.

22 Q. Would you hold your hands up for me. I don't see
23 a wristwatch. Do you wear a wristwatch?

24 A. I do not.

25 Q. When you were 16 years old, did you wear a

1 wristwatch?

2 A. No.

3 Q. Were you in the habit of constantly checking the
4 time to see what time it was?

5 A. Yes.

6 Q. That is how you did it?

7 A. Yeah.

8 Q. What about if you were in a place with no clocks?

9 A. I had my cell phone on me.

10 Q. So you were checking your cell phone?

11 A. Yes.

12 Q. Were you keeping a diary or a log of your
13 activities on July 2nd?

14 A. No.

15 Q. Did it feel like when you got up that day that
16 this was going to be one of the most unusual days in your
17 life?

18 A. No.

19 Q. Just kind of a normal summer day; right?

20 A. Yes.

21 Q. Were you working that summer?

22 A. I was.

23 Q. You were working at the restaurant?

24 A. Yes.

25 Q. Did you work that day?

1 A. I did not.

2 Q. Were you going to work the next day?

3 A. I was.

4 Q. So this was a Wednesday in the summertime. You
5 are with your girlfriend at her house, and you are just going
6 to kick back and enjoy the day. Is that the way it was going
7 to go?

8 A. Yes.

9 Q. Presley leaves around noon; right?

10 A. Yes.

11 Q. And you and Char hang out, and eventually you go
12 with Char when she goes to the doctor's appointment?

13 A. Yes.

14 Q. You said you sat out in the car?

15 A. Yes.

16 Q. You didn't want to read the old magazines?

17 A. No.

18 Q. When you were done, you went to lunch at the
19 restaurant you work at; right?

20 A. Correct.

21 Q. That restaurant is kind of near the Safeway. It
22 is around the corner from Safeway; right?

23 A. Yes.

24 Q. Mr. Butner got you to agree that you had a chile
25 relleno?

1 A. Yes.

2 Q. I put a Post-it on it, but I am not going to go
3 back there again. And then you went back to the townhouse;
4 right?

5 A. Yes. We went back to the office after the store.

6 Q. That is when you took the cookies by?

7 A. Correct.

8 Q. Did you see Steve?

9 A. Yes.

10 Q. How was he acting?

11 A. Normal.

12 Q. What is normal?

13 A. Calm, collected.

14 Q. Neck tie?

15 A. Yes.

16 Q. Mr. Businessman?

17 A. Yes.

18 Q. Did you stay very long?

19 A. Not very long, no.

20 Q. And was Steve glad to see the two of you?

21 A. Yes.

22 Q. Was he glad to see the cookies?

23 A. Yes.

24 Q. And did you tell Steve where were you going?

25 A. I don't remember.

1 Q. So you went from there, a couple of three minutes
2 around to the townhouse; right?

3 A. Yes.

4 Q. When you go to the townhouse, when you come up off
5 of Hassayampa Drive, which is the main road through this very
6 nice subdivision, right, to get into Alpine Meadows, you have
7 to go through a security gate; right?

8 A. Yes.

9 Q. The security gate has to be opened with a pass
10 code. You punch in the numbers or swipe it with some kind of
11 device; right?

12 A. Yes.

13 Q. When you come out, when you are leaving through
14 this gate on the other side, you just drive up to the gate.
15 You don't have to punch any buttons. It opens automatically;
16 right?

17 A. Correct.

18 Q. So you go into the townhome. These folks haven't
19 seen any pictures yet of this, but we are trying to describe
20 what it is. There are a number of identical or nearly
21 identical buildings along the golf course. Is that where
22 Steve lived?

23 A. Yes.

24 Q. Each of these units, you drive up and they have a
25 courtyard. You would drive the car into this courtyard;

1 right?

2 A. Correct.

3 Q. Around the courtyard were a number of other
4 condominiums, each building had several different units;
5 right?

6 A. Correct.

7 Q. And apparently there is an outside door on each of
8 the units, but you can get into the units by going through
9 the garage?

10 A. Correct.

11 Q. During the time you were going back and forth to
12 Alpine Meadows, would it be fair to say that you and Char and
13 Steve treated the garage door as the front door?

14 A. Yes.

15 Q. You go up the stairs and up on the second floor
16 where the living room area is?

17 A. Yes.

18 Q. And so you go -- there is nobody else at Alpine
19 Meadows that afternoon; right? Steve is still at work?

20 A. Correct.

21 Q. You go in and you are going to play video games?

22 A. Yes.

23 Q. And the video games are in the living room, which
24 if you go up this flight of stairs, the garage is to your
25 right; correct?

1 A. The living room would be to the right.

2 Q. So you go up the stairs from the garage, and you
3 turn right and you are in the living room; correct?

4 A. Correct.

5 Q. That is where the video games are?

6 A. Right.

7 Q. There is a sofa there?

8 A. Yes.

9 Q. Good sleeping sofa?

10 A. Yes.

11 Q. You are there for some period of time. Are you
12 paying much attention to what time it is at that point?

13 A. Not really.

14 Q. And Steve comes home, you told Mr. Butner you
15 thought it was around 5:00. Why do you think it was around
16 5:00?

17 A. That was just an approximate guess.

18 Q. Could it have been earlier?

19 A. It could have been.

20 Q. Could it have been later?

21 A. It could have been.

22 Q. You just don't know?

23 A. Right.

24 Q. And Steve comes in from work. Do you speak to
25 him?

1 A. Yes.

2 Q. And do you keep on playing video games with Char?

3 A. Yes.

4 Q. You don't leap up and say, Mr. DeMocker, sir, may
5 I help you with something?

6 A. No.

7 Q. It wasn't that kind of a relationship?

8 A. No.

9 Q. So Steve disappears off towards his bedroom, is
10 that what happened?

11 A. Yes.

12 Q. And you and Charlotte are playing video games?

13 A. Yes.

14 Q. You are under oath now, Jake, who was winning?

15 A. I believe Charlotte was.

16 Q. That is a safe answer. Are you paying much
17 attention to what Steve is doing at that point?

18 A. No, I am not.

19 Q. You are just hanging out with your girlfriend.

20 A. Correct.

21 Q. On a summer afternoon.

22 A. Yes.

23 Q. You said you thought Steve was home 15 or 20
24 minutes and then he left again; is that right?

25 A. Yes.

1 Q. Could it have been a little longer?

2 A. It could have been.

3 Q. Could it have been 30 or 40 minutes?

4 A. Possibly.

5 Q. Were you really paying much attention to time at
6 that point?

7 A. No, I was not.

8 Q. You were not logging in, Mr. DeMocker exits
9 bedroom, moves toward kitchen?

10 A. No, I am not.

11 Q. And Steve had obviously changed his clothes. He
12 changed out of his work clothes into what you told Mr. Butner
13 what you thought was shorts and a T-shirt; right?

14 A. Correct.

15 Q. Did Mr. DeMocker say where he was going?

16 A. I don't recall.

17 Q. He may have and you just don't remember?

18 A. Correct.

19 Q. Video games?

20 A. Yeah.

21 Q. Not taking notes?

22 A. No.

23 Q. Did you see what Mr. DeMocker was wearing on his
24 feet?

25 A. I did not.

1 Q. Weren't paying attention?

2 A. Correct.

3 Q. Not terribly important?

4 A. Correct.

5 Q. Because you were losing?

6 A. Yeah.

7 Q. Mr. DeMocker then would have gone down the same
8 stairs, back towards the garage; correct?

9 A. Correct.

10 Q. Did you hear the garage door go up immediately?

11 A. I don't remember.

12 Q. Could he have been in the garage for some period
13 of time before he actually left?

14 A. It is possible.

15 Q. Now, you told the police during one of your many
16 interviews that if -- you thought that if Steve was riding
17 his bike around the area, that you thought he probably would
18 have ridden right out of the garage. He wouldn't have driven
19 anywhere in his car. Is that your understanding?

20 A. Yes.

21 Q. He wouldn't have needed to get in the car and
22 drive anyplace; correct?

23 A. Correct.

24 Q. This Hassayampa loop that you talked about, is
25 there really such a trail?

1 A. I am not aware of one, no.

2 Q. Where did that name come from?

3 A. I got that from Charlotte.

4 Q. Have you ever been on something called the
5 Hassayampa loop trail?

6 A. No.

7 Q. Do you know where the Hassayampa loop trail
8 goes --

9 A. I do not.

10 Q. -- besides Hassayampa?

11 Do you know where it starts?

12 A. No.

13 Q. Do you know if it goes near the fitness center
14 parking lot?

15 A. I do not.

16 Q. Have you ever seen Steve riding his bike around
17 the neighborhood?

18 A. I have not.

19 Q. When Steve would go for runs, you said he would
20 mostly do long runs. Do you know where he would run?

21 A. Along the golf course.

22 Q. Which is right out in back of the condos; right?

23 A. Yes.

24 Q. Do you remember telling the police a couple of
25 nights before, come to think of it that Steve had gone out

1 for a late run up on Thumb Butte, which is not far away, and
2 came home late, around nine o'clock?

3 A. Correct.

4 Q. So it was not all that unusual for Steve, at this
5 point, the hottest part of the summer, to push his workouts
6 later in the evening?

7 A. Yeah.

8 Q. It was not terribly important for you and Char
9 that Steve be home at a particular time?

10 A. Correct.

11 Q. He is the adult, and you are the video game
12 playing guy, right. If he wanted to come home at nine
13 o'clock or ten o'clock, it wasn't any of your business;
14 right?

15 A. Right.

16 Q. You were not about to be concerned about it;
17 right?

18 A. Correct.

19 Q. Except you were hungry?

20 A. Yes.

21 Q. And Charlotte wanted to hold dinner for her dad;
22 right?

23 A. Yes.

24 Q. Now, this business about Mr. Butner had a number
25 of questions for you about what you told the police that

1 night. And I found a couple of places in here, actually way
2 more than a couple, where the police asked you again and
3 again, just like Mr. Butner did, about what you said.

4 At one point you said something to the
5 police in one of these interviews, months after this
6 happened, that really what happened was that, looking back on
7 it now, that Charlotte had made the assumption that her
8 father was riding something called the Hassayampa loop or in
9 the neighborhood, and because she assumed that, you assumed
10 you knew what she was talking about, and that is why you said
11 it.

12 A. Correct.

13 Q. Is that the way it went?

14 A. Yes.

15 Q. It is an assumption on top of somebody else's
16 assumption?

17 A. Correct.

18 Q. A simple way to put it is you had no idea where
19 Steve was; right?

20 A. Right.

21 Q. You didn't really care?

22 A. Right.

23 Q. If you didn't know until later, and Charlotte
24 didn't know where her father was at that point, and you
25 really didn't care either; right?

1 A. Correct.

2 Q. So when the police asked you, you just gave them
3 an answer; correct?

4 A. Correct.

5 Q. As we sit here today, you can't tell these folks
6 on the jury that on July 2nd you had any idea where Steve
7 DeMocker was?

8 A. Right.

9 Q. You told us you don't know anything about this
10 Hassayampa trial. How about the trails around Granite
11 Mountain? Do you know anything about those trails?

12 A. Yes.

13 Q. What do you know about them?

14 A. Just the loop around the base of the mountain. I
15 had been on horseback on one of the trails previously.

16 Q. Do you know where the Granite Mountain trailhead
17 is out past Bridle Path? It would be on the left where the
18 little firehouse is? Do you know where that trail is?

19 A. Yes.

20 Q. Have you been on any trails that take off from
21 there?

22 A. Yes.

23 Q. Is it a one horseback trip that you started there?
24 Is that where you started?

25 A. I had a friend whose property led directly out to

1 the trail.

2 Q. Okay. And which way did you go from that
3 trailhead when you went?

4 A. We exited from her property to the right.

5 Q. So there are a lot of different trails that branch
6 off from that trailhead; right?

7 A. Yes.

8 Q. We will come back and talk about what Steve said
9 that night. But you had more familiarity, if I am
10 understanding you, with the Granite Mountain area than you
11 did with the area around the Hassayampa golf course; right?

12 A. Yes.

13 Q. Let's talk about what happened next. So Steve
14 leaves, and you are still losing, and the idea comes up to go
15 out to the pool; right?

16 A. Correct.

17 Q. So actually what it is, you went to the pool not
18 long after Steve left; correct?

19 A. Correct.

20 Q. So if Mr. Butner had been talking about going to
21 the pool at 7:30, were you confused here today? You didn't
22 go to the pool at 7:30, did you?

23 A. I am not sure a specific time.

24 Q. Let's try and put a timeline. Steve gets home at
25 5:00 or some time after that, and he is there somewhere

1 between 15 minutes or 30, 40 minutes. It might be six
2 o'clock when Steve leaves. Is that possible?

3 A. Yes.

4 Q. When you went up to the pool, was the sun still
5 up?

6 A. Yes.

7 Q. Do you remember how long you stayed there?

8 A. About 20, 30 minutes.

9 Q. And then got in the car and drove back?

10 A. Correct.

11 Q. If you started going up at 7:30, it would have
12 been starting to get dark by about 7:30, right, at least
13 dusk; right?

14 A. Correct.

15 Q. Do you remember being at the pool as the sun was
16 going down?

17 A. I do.

18 Q. You do? Okay. So if you went to the pool at
19 7:30, what did you do between 6:00 and 7:30?

20 A. Played video games.

21 Q. Just kept on playing video games?

22 A. Yes.

23 Q. Until you won, and you said it was time to go to
24 the pool?

25 A. Yeah.

1 Q. That is your recollection? Is that what you
2 remember?

3 A. Yes.

4 Q. So you went up to the pool. You were there for 20
5 or 30 minutes, and you came back. Did you go swimming?

6 A. Yes.

7 Q. So you came back, and is that when you fell
8 asleep?

9 A. We had played some more video games when we got
10 back, and then fell asleep after that.

11 Q. Okay. And Steve still wasn't home. Had Charlotte
12 tried to get ahold of Steve before you fell asleep?

13 A. No.

14 Q. Charlotte wasn't panicked about where her dad was
15 that night. She was not frantic saying, we must find my
16 father.

17 A. No.

18 Q. She thought he had been gone a little long and she
19 was hungry; right?

20 A. Right.

21 Q. And there wasn't anything in the house for dinner?

22 A. Correct.

23 Q. Maybe you were hoping that Steve would take you
24 out to dinner?

25 A. No.

1 Q. So you fell asleep on the couch there; right?

2 A. In Charlotte's room.

3 Q. And it was about 9:45 when you got up?

4 A. Yes.

5 Q. Okay. And Steve still wasn't home; is that right?

6 A. Correct.

7 Q. Is that when Charlotte tried to call him?

8 A. Yes.

9 Q. That was when pretty quickly the decision was made
10 to run over to Safeway and get something for dinner?

11 A. Yes.

12 Q. You got in Charlotte's car and you left, and she
13 hadn't talked to her dad. And you think as you get to the
14 intersection of Iron Springs and Gail Gardner, Steve may have
15 passed; is that right?

16 A. Yes.

17 Q. Did you see Steve, or just see a car that looked
18 like his? Is that a big deal, seeing his car?

19 A. Not really.

20 Q. You go to the Safeway and you are shopping, and
21 Char takes a call from her dad sometime after 10:00?

22 A. Yes.

23 Q. And you are standing there when her phone rings,
24 and it is obvious she is talking to her dad?

25 A. Yes.

1 Q. You can hear her end of the phone conversation?

2 A. Yes.

3 Q. Do you know where Steve was calling from?

4 A. To my knowledge, it was from the workout center.

5 Q. You told us where the workout center is. The

6 workout center is just a couple of blocks up from the

7 entrance to Alpine Meadows; right?

8 A. Yes.

9 Q. If you are driving from the outside, you can go to
10 the fitness center without going through that security gate.

11 You can go straight up Hassayampa, up the little hill and
12 into the fitness center; right?

13 A. Yes.

14 Q. That is where the pool is, also? It is a little
15 complex?

16 A. Correct.

17 Q. That's where you thought Steve was calling from;
18 is that right?

19 A. Yes.

20 Q. Did you also have some sense that Steve was saying
21 he had been out on a bike ride and something happened and
22 that was why he was late? Did you have that information
23 already?

24 A. I can't remember.

25 Q. The plan was to grab the stuff, pay for it, and go

1 home and have dinner; is that right?

2 A. Yes.

3 Q. Steve would cut the workout short and meet you
4 there for dinner?

5 A. Correct.

6 Q. When you get there, it sounds like Steve must have
7 got there just ahead of you?

8 A. Right.

9 Q. You didn't see him ahead of you when you pulled in
10 the garage. He was already there?

11 A. Yes.

12 Q. The bike was already out, front wheel off?

13 A. Yes.

14 Q. That is how he kept the bike, right, front wheel
15 off?

16 A. I don't remember.

17 Q. Was it hanging on a hook?

18 A. No, just sitting against the wall.

19 Q. Do you know if he had to take the front wheel off
20 to get it in his car?

21 A. I would think so, yes.

22 Q. He didn't have a bicycle rack on the roof, did he?

23 A. No.

24 Q. So, if he put it in the trunk or the hatchback, he
25 might have had to take that wheel off to get it to fit?

1 A. Yes.

2 Q. Are you much of a biker?

3 A. Yes, I am.

4 Q. Do you like to ride mountain bikes?

5 A. I have ridden in cycles.

6 Q. Have you ever ridden a mountain bike?

7 A. I have.

8 Q. Have you ever ridden a road bike?

9 A. I have.

10 Q. You knew enough about bikes, then, to know that
11 Steve's mountain bike had a certain kind of clipless bike
12 pedal; right?

13 A. Yes.

14 Q. They are called S.P.D. Are you familiar with that
15 name?

16 A. I am familiar with it.

17 Q. Unlike a regular bicycle pedal that we think of,
18 or even the kind of bicycle pedal that has a metal cage on it
19 that you put your toe in, these pedals actually are a system
20 where the pedal and the shoe match up. There is a cleat on
21 the shoe that snaps into the pedal. Is that your
22 understanding?

23 A. Yes.

24 Q. And that allows you then, sort of like a ski boot
25 fitting in a ski binding, it allows you to have your foot in

1 constant contact when you are pedaling. That's how they
2 work; right?

3 A. Correct.

4 Q. So, if you are a serious bike rider, that helps
5 you be stronger on the bike because you can push down and
6 pull up and your foot never comes off the pedal; right?

7 A. Correct.

8 Q. Have you ever used those kinds of shoes?

9 A. I have.

10 Q. Did you see those shoes at Steve's townhouse,
11 similar shoes to those?

12 A. I have seen them, yes.

13 Q. In fact, there was a pair on the shelf in the
14 garage where the helmet and bike gloves were?

15 A. Yes.

16 Q. We will see pictures of the bike, but the pedal
17 then on Steve's mountain bike was smaller than a pedal you
18 would see on a child's bicycle; right? It was just about --
19 I am making a shape with my index finger and my thumb. That
20 is roughly the size of the pedal; right?

21 A. Yes.

22 Q. You could ride it with other shoes, but it would
23 be difficult and uncomfortable to ride that kind of a bike
24 pedal with running shoes or something else?

25 A. Correct.

1 Q. It wouldn't make much sense, because it is
2 designed for a specific kind of shoe --

3 A. Correct.

4 Q. -- which Steve had?

5 A. Yes.

6 Q. So you go up, and you and Charlotte are in the
7 kitchen, and of course you are helping her cook; right?

8 A. Yes.

9 Q. Okay. And Steve is in the shower. You can hear
10 the water running; correct?

11 A. Yes.

12 Q. Now, the kitchen -- if you come up the stairs, the
13 kitchen is more or less right in front of you; right?

14 A. Right.

15 Q. A little bit off to the left, but more or less
16 right in front of you. Off to the left of the landing and
17 the stairs is the dining room table; correct?

18 A. Yes.

19 Q. A bunch of chairs, and there is a hallway that
20 goes back to Steve's bedroom; right?

21 A. Yes.

22 Q. And his bath, and the laundry room is back there,
23 too? Yes?

24 A. (Witness nods head up and down.) Yes.

25 Q. She takes down what you are saying. She needs to

1 hear your answer.

2 And so can you hear the shower, and you
3 made the assumption that if Steve was home and you couldn't
4 see Steve, and the shower was running, it was likely Steve in
5 the shower; right?

6 A. Correct.

7 Q. You didn't know that for a fact, but you thought
8 that. So Steve comes out, and he sticks his head out. He is
9 wearing a towel. He asks how dinner is going. He gets a
10 report, and then goes back in the bathroom?

11 A. Yes.

12 Q. When he comes out for dinner, he is dressed. He
13 is wearing shorts and a T-shirt?

14 A. Correct.

15 Q. And he sits down, and in that conversation at
16 dinner, as you are sitting around the dinner table, he talks
17 a little bit about his bike ride; doesn't he?

18 A. Yes.

19 Q. He says he had been out on a ride, and he had
20 gotten a flat tire, and it was the farthest point of his
21 ride, and he had to walk his bike back most of the way;
22 right?

23 A. Yes.

24 Q. He doesn't know that you don't know where he has
25 been; right? He wouldn't have any way of knowing that. "He"

1 being Steve; correct?

2 A. Correct.

3 Q. You don't know where he has been; right?

4 A. Right.

5 Q. So you are having this conversation about his bike
6 ride, and neither one of you really know where this all
7 happened. He knows where he was, but you don't, and he
8 doesn't know that you don't know that; correct?

9 A. Right.

10 Q. Okay. But it doesn't matter, because he is just
11 telling you about his bike ride. In your mind, it doesn't
12 matter whether this happened two miles away or out at Granite
13 Mountain. He is just telling you a story; right?

14 A. Correct.

15 Q. And he talks about being tired; right?

16 A. Yes.

17 Q. Dehydrated. Did he say he was dehydrated?

18 A. I don't remember.

19 Q. Said he was not all that hungry. It is now
20 between 10:30 and 11:00?

21 A. Yes.

22 Q. And then out of the blue, Steve says to Char, have
23 you heard from your mom today? Do you remember him saying
24 that?

25 A. I do.

1 Q. And Char says that she had been texting her mom,
2 but hadn't heard from her since about 7:30; right?

3 A. Correct.

4 Q. And you knew that to be true?

5 A. Yes.

6 Q. And Steve at that point then says that he had
7 gotten a call while he was in the shower, and that Carol,
8 Char's mom, had been talking on the phone to her mother, to
9 Char's grandmother, had said, "Oh, no" and the phone went
10 dead. Steve said that at the table; right?

11 A. I don't remember that.

12 Q. Do you remember Steve saying that he had taken a
13 call when he was in the bathroom?

14 A. No.

15 Q. Do you remember something about a voice mail?

16 A. Yes.

17 Q. Could you be confused? Could you just be wrong
18 about that?

19 A. I could.

20 Q. Are you prepared to swear under oath that Steve
21 said here today, you are under oath, that Steve came out and
22 said, "I got a voice mail, and it was from Carol's mother"?
23 Is that exactly what he said?

24 A. I am not sure.

25 Q. It is hard to remember; isn't it, when something

1 happened two years ago, that at the time didn't seem like a
2 big deal, and you have been asked about it over and over and
3 over again; right? It is hard to remember what happened and
4 what you have been told, I would assume?

5 A. Yes.

6 Q. And what you have read over and over again;
7 correct?

8 A. Correct.

9 Q. And what the police told you; correct?

10 A. Correct.

11 Q. And the police were pretty strong with you on more
12 than one occasion?

13 A. Yes.

14 Q. They told you they were sure Steve did it, and
15 they had the right guy and you needed to help them; right?

16 A. Right.

17 Q. This was a brutal murder and they were standing up
18 for Charlotte's mother and you needed to help them; right?

19 A. Yes.

20 Q. How did that make you feel?

21 A. Uncomfortable.

22 Q. You just wanted to tell them the truth; right?

23 A. Yes.

24 Q. Just like you want to tell the truth here today?

25 A. Yes.

1 Q. Thinking about the particular sequence of events
2 that night, how sure are you about the sequence of events
3 once Steve comes out of the shower? Do you have a perfect,
4 crystal clear vision of that in your head?

5 A. I do not.

6 Q. Steve -- you said that Steve said that he got a
7 voice mail from his business partner that his computer had
8 been on; right?

9 A. Yes.

10 Q. Is it possible that what Steve was -- at some
11 other time, not that night but some other time, his partner
12 had called him about his computer being on, and that just
13 reminded him that he always needed to check his computer. Is
14 that possibly what happened?

15 A. No. I specifically remember him saying he got a
16 call from his partner.

17 Q. That night?

18 A. Yes.

19 Q. Did you ever hear that call?

20 A. I did not.

21 Q. And he left and came back?

22 A. Yes.

23 Q. And he came back -- did he leave with anything in
24 his hands?

25 A. I don't remember.

1 Q. Did he come back with anything?

2 A. I don't remember.

3 Q. Was he upset or agitated when he came back?

4 A. Didn't really seem like it.

5 Q. Just seemed like another normal night; right?

6 A. Yes.

7 Q. And then this conversation starts about this call,
8 about what had happened to Charlotte's mother; right?

9 A. Yes.

10 Q. Do you remember telling the police that you
11 thought it was actually, looking back on it, probably your
12 idea that you and Char would go out to the property?

13 A. Yes.

14 Q. Okay. And that is quite possible; right?

15 A. Well, I am not sure if it was Steve's suggestion
16 or my suggestion. I can't be --

17 Q. As between Char and her dad, Char was getting more
18 and more concerned. She was texting her mom and calling her
19 mom and not getting an answer. Char was getting more and
20 more concerned; right?

21 A. Correct.

22 Q. At the same time Steve was saying, look, we have
23 just got a divorce. It wouldn't be right if I went out
24 there. What if she is with some guy? That would be awkward.
25 That was kind of the discussion between Charlotte and her

1 dad; right?

2 A. Correct.

3 Q. In any way did you get the impression that Steve
4 was forcing you and Char to go out there?

5 A. No.

6 Q. Did you get the impression that Steve's reluctance
7 to go out there was unreasonable?

8 A. No.

9 Q. It seemed reasonable; right?

10 A. Yes.

11 Q. In your mind, that would be a respectful thing for
12 somebody to say. I don't want to go out and invade
13 somebody's privacy, if they are trying to be alone; right?

14 A. Yes.

15 Q. Did Steve seem to be concerned, though?

16 A. He did.

17 Q. And do you remember then at some point Steve
18 saying he was going to call back east, and either talk to
19 Carol's mom or her brother to see whether anything had
20 happened? Do you remember him saying that?

21 A. I don't specifically remember him saying that.

22 Q. Do you remember Steve going over to the landline
23 that was on the counter and leaning on the counter and
24 calling up and talking to Char's Uncle John right in front of
25 you? Do you remember that?

1 A. I remember a phone call, yes, but I don't know who
2 he was talking to.

3 Q. And he came back and said that the police were
4 supposed to go out there, but it didn't sound like the police
5 had gone out yet. Do you remember getting that information?

6 A. Yes.

7 Q. So, now it's 11:30 at night, and this is something
8 that happened apparently much earlier in the evening, and
9 nobody has an answer about what is up with Carol; right?

10 A. Correct.

11 Q. So the decision is made that you and Char would go
12 out. Char would drive, because you don't drive yet, and she
13 would be on the phone with her dad, Steve; right?

14 A. Yes.

15 Q. Does that seem dangerous to you?

16 A. Yes.

17 Q. Did you caution against going?

18 A. I didn't.

19 Q. You wanted to be there with Charlotte, though;
20 right?

21 A. Yes.

22 Q. The instructions were, if you saw anything that
23 didn't add up, just back it out; right?

24 A. Correct.

25 Q. That seemed like a safe thing to do; right?

1 A. Right.

2 Q. So you and Charlotte drive out there. Do you go
3 anywhere else on the way out?

4 A. No.

5 Q. At some point does Charlotte talk to Renee?

6 A. On the way out?

7 Q. Before you go out there?

8 A. I don't remember.

9 Q. So you drive out, and at some point you get there,
10 and Char calls her dad like she was asked to do; right?

11 A. Yes.

12 Q. And she has him on the phone, and you were heading
13 towards Bridle Path?

14 A. Yes.

15 Q. You have been out to Bridle Path before?

16 A. Yes.

17 Q. It is down a pretty dark road, not exactly in the
18 middle of nowhere, but it is not crowded; right?

19 A. Correct.

20 Q. It is pretty dark out there; right?

21 A. Yes.

22 Q. You said you saw the police lights and the yellow
23 tape; right?

24 A. Yes.

25 Q. What did Char do?

1 A. She relayed that to Steve what we saw.

2 Q. Was she starting to get really upset?

3 A. Yes.

4 Q. It was obvious something bad had happened?

5 A. Yes.

6 Q. This is not a good thing?

7 A. Correct.

8 Q. And you drive in, and you said detectives came to
9 either window; is that right?

10 A. Yes.

11 Q. And somebody just blurted out, "Your mother is
12 dead." Is that the way the police handled it?

13 A. I don't remember exactly.

14 Q. Were you all standing outside the car when
15 Charlotte dropped the phone?

16 A. No.

17 Q. She dropped it at the window?

18 A. No, she dropped it in the car.

19 Q. In the car. And you picked it up?

20 A. Yes.

21 Q. And Steve was on the line; right?

22 A. Yes.

23 Q. And Charlotte is freaking out; right?

24 A. Yes.

25 Q. And you are talking to Steve on the phone. Do you

1 remember telling the police that as soon as you told Steve
2 this you could hear his heavy breathing on the phone?

3 A. Yes.

4 Q. You could hear that he was crying on the phone;
5 right?

6 A. Yes.

7 Q. Right away; right?

8 A. Correct.

9 Q. And then he wants to know -- his first thought is
10 are you kids okay? Is Char okay? Is that right?

11 A. Right.

12 Q. And you said you need to get out here, and he said
13 I will be right there?

14 A. Yes.

15 Q. And you gave the phone back to the cops?

16 A. He had asked to talk to one of them.

17 Q. So you gave the phone to one of the cops. And you
18 and Char got out of the car?

19 A. Charlotte was still in the car at that time.

20 Q. Is anybody doing anything for her?

21 A. There was an EMS personnel talking to her.

22 Q. Like a guy from the ambulance?

23 A. Yes.

24 Q. She is crying. Was she hysterical?

25 A. Yes.

1 Q. And what do you do? You get out of the car?

2 A. Yes.

3 Q. And so you are talking to Sergeant Huante; right?

4 A. Correct.

5 Q. And he is asking you all these questions, and you
6 are giving him information. Does that feel weird to you --

7 A. No.

8 Q. -- that you are being asked questions? Okay. And
9 you are still outside the house. You never go in the house;
10 right?

11 A. That night?

12 Q. That's right. That night.

13 A. No.

14 Q. And Char never goes in the house that night?

15 A. Correct.

16 Q. Do you know Jim Knapp?

17 A. I had met him.

18 Q. Did you see him out there?

19 A. Yes.

20 Q. He was just out there?

21 A. Yes.

22 Q. What was he doing?

23 A. He was talking with detectives.

24 Q. Just standing there? He was just standing there?

25 A. He was talking with him.

1 Q. Did he come over and talk to Charlotte?

2 A. I don't remember.

3 Q. So you don't know how long it was, but Steve shows
4 up; is that right?

5 A. Yes.

6 Q. And he comes over to Charlotte. What do they do
7 when they see each other?

8 A. They hug.

9 Q. For a long time?

10 A. I don't remember duration.

11 Q. What were you doing?

12 A. I was standing.

13 Q. Just watching what was going on?

14 A. Yes.

15 Q. And then eventually the cops separate them and
16 start talking with them?

17 A. Yes.

18 Q. And then at some point not long after that the
19 cops want all of you to come down to the Sheriff's office; is
20 that right?

21 A. Correct.

22 Q. So Commander Mascher takes you in his car. How
23 does Charlotte get downtown?

24 A. I'm sorry?

25 Q. How does Charlotte get downtown?

1 A. I don't know. I believe one of the detectives had
2 taken her in their car.

3 Q. Did you want to be with her?

4 A. I did. I was under the impression that I really
5 wasn't allowed to be at that time.

6 Q. Was that based on something that the police said
7 to you?

8 A. Just that they needed to separate us and question
9 us.

10 Q. You get that from television or movies that that
11 is what the cops do. Where do you have that idea that the
12 police separate you and talk to you?

13 A. Just basic knowledge, I guess. That is what
14 happened.

15 Q. That is the way they did it; right?

16 A. Right.

17 Q. But you wanted to be with Charlotte. If you could
18 have been, you would have been with Charlotte; right?

19 A. Yes.

20 Q. Do you know how Steve got downtown?

21 A. I believe he was in the car with another
22 detective.

23 Q. Is it possible he actually drove his own car?

24 A. It is possible. I am not sure.

25 Q. So when you got to the Sheriff's office, just a

1 couple of blocks from here, what happened when you got there?

2 A. Commander Mascher began questioning me.

3 Q. Took you inside?

4 A. Yes.

5 Q. Put you in a room?

6 A. Yes.

7 Q. By yourself?

8 A. Yes.

9 Q. Did you see a tape recorder?

10 A. I did.

11 Q. He put a tape recorder out and started talking to
12 you; right?

13 A. Yes.

14 Q. Did you ask how Charlotte was?

15 A. I don't remember.

16 Q. You were just being questioned. Did you ask if
17 you could talk to your dad?

18 A. They had -- Commander Mascher had asked if I
19 wanted to call my parents, and I said, no.

20 Q. That wasn't the best moment to be talking to your
21 parents probably?

22 A. I felt kind of uncomfortable calling them.

23 Q. So you talk to them. How long do you think you
24 talked to them? Just Commander Mascher; right?

25 A. Yes.

1 Q. Any other detectives come in and out of the room
2 while you were talking to him?

3 A. I don't remember.

4 Q. Do you have some sense of how long you talked to
5 him?

6 A. I don't.

7 Q. Then there was another interview sometime later
8 that night where you and Charlotte were finally together, and
9 you were being questioned at the same time; is that right?

10 A. Yes.

11 Q. Do you remember who that was done by?

12 A. Commander Mascher.

13 Q. And eventually you were allowed to leave, and it
14 was around 5:00 in the morning; is that right?

15 A. Yes.

16 MR. SEARS: Your Honor, this might be a good
17 time for a recess.

18 THE COURT: I was about to ask.

19 MR. SEARS: I have plenty more to cover. I am
20 not out of Post-its yet.

21 THE COURT: Remember the admonition, ladies
22 and gentlemen. We will take a 15-minute mid-afternoon break.

23 You may step down. Watch your step.

24 THE WITNESS: Thank you.

25 (Whereupon, the jury exits the courtroom.)

1 THE COURT: The record can reflect that the
2 jury is still absent from its break. The prosecution team is
3 present. The defense team is present. The defendant is
4 present.

5 During the interim, we received two
6 questions from the jury with regard to -- one of the
7 questions that pertains more to the witness, I am going to
8 see if there is any need to cover that after the conclusion
9 of the cross-examination and redirect examination, if there
10 is any.

11 The other is a question directed to the
12 Court. The lawyers have had a chance to take a look at what
13 the question is. And my proposal was to give the jury a
14 little more education, without reading the question to them,
15 about direct examination versus cross-examination and
16 redirect examination, and to caution them about the admission
17 of evidence being governed by rules of law, and my applying
18 those rules of law as part of the presentation, and to
19 explain that the direct examination is not permitted to --
20 generally speaking, is not permitted to use leading
21 questions. The cross-examination is permitted to use leading
22 questions, and to explain what leading questions are.

23 Any objection to that general process? I
24 haven't written it out in any fashion.

25 MR. BUTNER: No objection.

1 THE COURT: Mr. Sears?

2 MR. SEARS: Your Honor, we were looking at
3 Evidence Rule 611(c), which generally says how leading
4 questions may be used. As always it is a little more
5 complicated, because there is that middle ground where you
6 can lead on direct for foundation.

7 THE COURT: That is why I said, generally
8 speaking, leading is not allowed on direct.

9 MR. SEARS: You can read them Rule 611(c) in
10 its entirety.

11 THE COURT: If you think it won't muddle them
12 up and confuse them further.

13 MR. SEARS: People did it to me. It is time
14 for payback.

15 THE COURT: Cruel and unusual punishment.

16 MR. SEARS: A little bit of that.

17 THE COURT: Any objection to my generally
18 telling them about leading questions. I don't want to read
19 the question that was asked, because it would tend to be
20 slanted a bit. Any further record that you want to make on
21 that issue, Mr. Sears?

22 MR. SEARS: No, Your Honor.

23 THE COURT: Let's call the jury back in.

24 (Whereupon, the jury enters the courtroom.)

25 THE COURT: Thank you. Be seated, please.

1 Mr. Janusek, if you could come back up and take your seat.

2 I'll mention to the jury, and note that
3 the defendant is here and all counsel are present.

4 I received a question from a juror. I am
5 not going to read the question, but it was basically asking
6 about the nature of the questioning that is presented by each
7 side. I told you at the beginning of the case that admission
8 of evidence in court is governed by rules of law, and it is
9 my job as the judge to apply those rules of evidence and
10 other rules to the evidence that is being presented. And I
11 will caution, once again, that you are not to make any
12 assumptions from my rulings about the evidence that is
13 presented.

14 If an objection is sustained, you have to
15 disregard the question and not guess what the answer to the
16 question might be. If the testimony is stricken from the
17 record, you are not to consider that testimony for any
18 purpose. And in particular, you are not to concern
19 yourselves with the reasons for my rulings on the admission
20 of evidence. It is no indication from me of the weight or
21 credibility of the evidence that is presented.

22 But I was asked, in particular, about how
23 this questioning process takes place. Generally speaking, as
24 I told you at the beginning in the preliminary instructions,
25 with each witness who is called, there is a direct

1 examination. That is the person calling the witness who asks
2 questions. Then there is cross-examination by the other
3 side, and finally there is redirect examination, and of
4 course, there is an opportunity for you all to ask questions
5 as well.

6 In terms of the nature of the
7 questioning, under the rules of evidence, the person
8 calling -- the proponent of the witness, the person calling
9 the witness is, generally speaking, not allowed to ask
10 leading questions. Leading questions are questions that
11 contain a bit of the information that is expected in
12 response. So sometimes you get yes or no responses, because
13 the question already contains a certain amount of
14 information.

15 The proponent usually, or the attorney
16 for the person calling the witnesses on direct examination
17 and redirect examination, is usually not allowed to ask
18 leading questions, except for some foundational matters. The
19 cross-examiner, whoever the opposing party is from the person
20 who calling the witness, is allowed to ask leading questions.
21 So that is why there is some difference between the nature of
22 the questions that are asked in direct or redirect
23 examination from those questions that are asked in
24 cross-examination.

25 And you will see, it simply depends on

1 which party is calling the witness as to which one is
2 authorized under the rules and allowed to ask leading
3 questions. So that is a little bit of legal education. Hope
4 it is helpful in understanding some of the process that is
5 going on.

6 I will give the question to the clerk.

7 MR. SEARS: Your Honor, before I resume with
8 Jacob, we have a couple of exhibits that I think we are
9 prepared to stipulate into admission.

10 The first one I have is defense Exhibit
11 2298, which is the CD that has the audio of the calls to
12 Mr. DeMocker's home voice mail, and the answering machine
13 transcript. Both has John Kennedy, too. So I believe we
14 have a stipulation that 2298 may be admitted.

15 MR. BUTNER: We do.

16 THE COURT: My understanding is only a portion
17 of that would be played today.

18 MR. BUTNER: Exactly. In fact, it has already
19 been played today.

20 MR. SEARS: And there is another call and
21 another transcript that relates to a witness coming in
22 perhaps tomorrow.

23 THE COURT: 2298 is admitted by stipulation of
24 the parties. Exhibit 2298 is admitted.

25 MR. BUTNER: We have a stipulation concerning

1 Exhibit No. 212, that being the recording of the conversation
2 with Ruth Kennedy calling the Yavapai County Sheriff's
3 office.

4 THE COURT: So what is the stipulation on the
5 call to the Sheriff's office?

6 MR. BUTNER: That that may be admitted into
7 evidence also.

8 MR. SEARS: Since we have already played it.

9 THE COURT: Understand. Exhibit 212 is
10 admitted by stipulation.

11 MR. BUTNER: And then we have a stipulation
12 concerning Exhibit 670 and 671, that they may also be
13 admitted into evidence. They are receipts from Nevada Bob's
14 on Camelback Road in Phoenix, both of them.

15 MR. SEARS: That's correct. That was to allow
16 a custodian of records not to come here and testify.

17 THE COURT: Exhibit 670 and Exhibit 671 are
18 also admitted.

19 MR. BUTNER: Thank you, Your Honor.

20 THE COURT: Thank you.

21 You may resume your cross-examination.

22 MR. SEARS: Thank you.

23 CROSS-EXAMINATION RESUMED

24 BY MR. SEARS:

25 Q. How are you doing, Jake?

1 A. All right.

2 Q. Okay. In one of these many interviews that --
3 which you had, there was one that took place on October 24th
4 of 2008. Two detectives, Detective McDormett and Detective
5 Brown interviewed you at the Sheriff's office. And Detective
6 McDormett was talking to you about statements that you made.
7 I think they were trying to get a handle on what they thought
8 were different statements that you made about the same event.

9 And McDormett says on Page 6 of our
10 transcript at Line 19; "Okay. The trail thing. There has
11 been some discussion. I know there was a couple of
12 statements made where you stated --and we are going to get
13 this closed right now -- where you had made to initial
14 officers and detectives that Steve was going to the
15 Hassayampa trail. Other statements made was Steve was going
16 to the Granite Mountain trail." And you answered, "Right."
17 And Detective McDormett says, "Which? Can you clear that up
18 for us." And you said, "The idea of that night when it first
19 happened --

20 MR. BUTNER: What page are you on?

21 MR. SEARS: Page 6 and 7 of our transcript of
22 this interview.

23 MR. BUTNER: Is this August 5th of 2008?

24 MR. SEARS: No. October 24, McDormett and
25 Brown.

1 MR. BUTNER: Sorry. Thank you. 2008.

2 THE COURT: You may proceed.

3 BY MR. SEARS:

4 Q. You said, "the idea that night when it had first
5 happened, I hear that the Hassayampa trail was -- just from
6 what I gathered from Charlotte that is where she thought he
7 was." McDormett says, "Okay." "I had no other knowledge.
8 That is just -- that is what I told you guys is what" --
9 McDormett says, "Okay." You say, "what she had suggested."

10 Is "she" Charlotte then?

11 A. Yes.

12 Q. And that is true. That is what you told us here
13 today. It is an assumption on top of an assumption; right?

14 A. Correct.

15 Q. Now, at some point in an earlier interview. It
16 would be an interview that took place on August 5th, 2008.
17 Detective Brown.

18 MR. BUTNER: Page, please.

19 MR. SEARS: I am getting there. That would be
20 Page 68 of our transcript, Line 22. It is McDormett and
21 Brown again.

22 And McDormett says at Line 22, "Okay. Is
23 it unusual for him to be talking -- his, you know, bike ride
24 or anything, or is that what you guys usually" -- you said,
25 "No, especially sense he started to do these longer" --

1 Detective McDormett interrupts you and said, "Right." And
2 you finish by saying -- "hikes or runs."

3 And next page, McDormett says, "Right."
4 You say, "We kind of talked about it a little bit, so" --
5 McDormett says, "But did it seem -- anything seem out of the
6 ordinary with that guy that night?"

7 Did you understand when he was talking
8 about "that guy," that he was talking about Steve?

9 A. Yes.

10 Q. And you said, "Huh-uh, nothing at all, actually,"
11 And McDormett says, "Okay." And you go on to say, "And even,
12 I mean, you had asked if anybody acted a little different,
13 not the way I would suspect. He acted exactly the way I
14 suspected, you know, you would suspect somebody would act."

15 You are talking about Steve; right?

16 A. Correct.

17 Q. And you are talking about the night Carol died;
18 right?

19 A. Correct.

20 Q. McDormett said, "Okay." And you say, "He was
21 devastated when I got on the phone with him and told him."

22 A. Yes.

23 Q. You are talking about Steve; right?

24 A. Yes.

25 Q. You are talking about when Char dropped the phone

1 inside the car, and you picked it up and told Steve that
2 Carol was gone; right?

3 A. Yes.

4 Q. You used the word "devastated." That was your
5 impression of Steve?

6 A. Yes.

7 Q. Now, in the same interview at Page 99, we are
8 talking about this dinner and the conversation about Carol,
9 and this information about Carol. And Detective -- talking
10 about this, Line 6, you say, "Yeah, I had -- once you had
11 mentioned the call from the brother, I had just remembered
12 that so" -- and Detective Brown says, "That's right. Okay.
13 So that happened how shortly after you sat down for dinner?"
14 You say, "That was after dinner." Detective Brown says,
15 "After dinner." You say, "Right."

16 Detective Brown says, "Okay. So had you
17 guys been talking about concerns during dinner?" You say,
18 "Yes. Once he brought it up, which we both started to get a
19 little -- we all started to get concerned. And then he -- I
20 think he got up and called and said, 'I am going to call Ruth
21 or John again, okay,'" and you say, "and just talk to them.
22 And he was in his bedroom while he was doing that."

23 So the "he" we are talking about is
24 Steve; right?

25 A. Yes.

1 Q. When you were being interviewed several months
2 after this happened, your recollection was that the talking
3 about the concerns, the "concerns" being what had been
4 reported about Carol, that she had said "Oh, no" and the
5 phone went dead and nobody could find her; right?

6 A. Correct.

7 Q. And then Steve said after dinner that he was
8 concerned and he was going to call Ruth or John. Did you
9 know who John was?

10 A. John, I believe, was Carol's brother.

11 Q. Did you know it that night, or is that something
12 you have learned later?

13 A. It is something I learned later.

14 Q. Steve was going to call somebody and see what was
15 going on; right?

16 A. Right.

17 Q. So he went into his bedroom to make that call?

18 A. I believe so, yes.

19 Q. And then he came back out. And this is at Line
20 27, Detective Brown says, "Okay, so he is talking about that
21 he came in and said, you know, I don't feel comfortable going
22 over there," and then I said -- I think this is a mistake. I
23 think it is you talking, not Detective Brown. "And then I
24 said, well, why don't we call the emergency rooms, and if
25 nothing shows up, then Charlotte and I will go over there."

25 This is only now an interview, not that

1 long, just a few months after this happened. Is that, as you
2 think back on it now, a pretty accurate description of the
3 sequence of events that led right up to the point where you
4 and Char got in the car to go out there?

5 A. That he had called Carol?

6 Q. That he said he was going to call Carol's mom,
7 Char's grandmother, and he apparently did that, and he was
8 going to call Carol one time to see if she would answer the
9 phone; right?

10 A. Yes.

11 Q. You remember that; right?

12 A. Yes.

13 Q. But what was really driving this was that even
14 though it was possible that Carol just wouldn't return
15 Steve's call, particularly if she had somebody over there,
16 Char seemed concerned that her mother wouldn't answer her
17 calls; right?

18 A. Correct.

19 Q. And that your impression was that no matter what
20 Carol was doing, if Char texted or called her, she would find
21 a way to return that; right?

22 A. Yes.

23 Q. That is what -- not only Charlotte, but you and
24 Steve were getting concerned about that just doesn't sound
25 right; correct?

1 A. Right.

2 Q. Okay. Now, let's kind of fast forward a little
3 bit to the next day, which would be July 3rd, and you had
4 been up most of the night, and you said you got some sleep
5 and got up again at 9:00 the next day. Is that what you
6 said?

7 A. Yes.

8 Q. So you got a few hours of sleep the next day?

9 A. Correct.

10 Q. You spent the bulk of the day over at Renee's
11 house waiting for permission to go home to Alpine Meadows;
12 correct?

13 A. Correct.

14 Q. Steve was not with you. It was you and Renee and
15 Char; is that right?

16 A. At that time, Steve was still, to my knowledge, at
17 the station being questioned.

18 Q. During most of the next day, you didn't see Steve;
19 right?

20 A. No.

21 Q. Until you got back over to Alpine Meadows and then
22 he shows up; right?

23 A. No. He had gone over to Renee's house after he
24 had been released.

25 Q. In the middle of the day sometime?

1 A. Yes.

2 Q. Were you aware that the police had, in addition to
3 the other thing from the search warrant, taken Steve's car?

4 A. At that time?

5 Q. Yes.

6 A. Yes.

7 Q. Do you remember discussions about the fact that
8 they also had Steve's wallet with his credit cards, and how
9 was he going to rent a car if they were going to keep his car
10 very long?

11 A. I don't remember.

12 Q. Were you aware there was discussion about renting
13 a car so that Steve could have something to drive if the
14 police were going to hang onto his car for more than a little
15 bit?

16 A. Yes.

17 Q. Do you remember those discussions that day, that
18 day being the 3rd of July, the first full day after Carol
19 died?

20 A. I do.

21 Q. And do you remember that it was decided that Renee
22 would rent the car, because she had I.D. and credit cards,
23 and that she would loan her car to Steve, and she would drive
24 the rental car? Do you remember that plan?

25 A. I do.

1 Q. And, in fact, that is what happened; right?

2 A. Yes.

3 Q. And do you remember that in that same period of
4 time, Renee's son and little grandson were visiting her?
5 They were down from Portland, Oregon.

6 A. Yes.

7 Q. Little Alder. Did you see little Alder?

8 A. I did.

9 Q. There was a car seat in Renee's car that she had
10 put in there so she could drive her grandson. Do you
11 remember that?

12 A. I do.

13 Q. There was some discussion about taking the car
14 seat out of Renee's car that Steve was going to drive, and
15 putting the car seat into the rental car that Renee was going
16 to drive?

17 A. When Renee had taken Charlotte and I back to the
18 Alpine Meadows house, it was in the rental car, and the baby
19 seat was not in the car.

20 Q. Do you remember any discussion -- if you don't,
21 that is fine -- do you remember any discussion about swapping
22 out the baby seat so that Renee would have it for her
23 grandson?

24 A. I do not.

25 Q. Do you know whether Renee's car was over at Alpine

1 Meadows at any point during that day?

2 A. I had not been aware. I had not seen it there.
3 It could have been.

4 Q. You didn't go back to Alpine Meadows until 4:30 or
5 5:00 that afternoon?

6 A. Correct.

7 Q. So if Renee's car was over there, you would have
8 no way of knowing; right?

9 A. Correct.

10 Q. Renee had the rental car?

11 A. Correct.

12 Q. So if Renee's car was over there, maybe Steve had
13 it; right?

14 A. Correct.

15 MR. BUTNER: Are we talking July 3rd?

16 MR. SEARS: Yes, sir.

17 Q. Did you understand my questions to be asking about
18 July 3rd?

19 A. Yes.

20 Q. Okay. This golf head cover that they were asking
21 you about, you said that you thought the discussion about it
22 blowing into Renee's car was that very night, the 3rd, after
23 the police left the second time; right?

24 A. Yes.

25 Q. You were interviewed by Detective McDormett on

1 October 28. They came back a few days later. And at Page
2 20, Detective McDormett says at Line 7, "Now, if you knew for
3 a fact that you didn't do it and this is bullshit," and you
4 said, "No, I wouldn't." And there was an inaudible. And
5 McDormett says, "Yeah, what does that tell you, all this
6 other stuff." And you go, "Right, I mean" -- McDormett says,
7 "I could lay this all out for you." And you say, "Pretty
8 obvious." "I could lay it all out for you. There is a thing
9 about a golf club and a golf club head sock. Is there
10 anything about that?" And you say, "No, uh" -- McDormett
11 says, "The golf club head cover?" And you say, "Well, I
12 mean, I knew when you guys were telling the next day, that is
13 what you were looking for, and I guess it turned up either
14 that evening or the next morning in Renee's car. That was
15 pretty much all I heard about the head sock."

16 Do you remember telling McDormett that in
17 late October of 2008?

18 A. I do.

19 Q. It is possible, Jake, that now nearly two years
20 later you have compressed a bunch of different things that
21 happened into one day. It is quite possible that the
22 discussion about the head sock was not on the 3rd, but it
23 might have been on the 4th; right?

24 A. I specifically remember it turning up on the 3rd.

25 Q. Why would you tell McDormett on October 28, I

1 guess it turned up either that evening or the next morning?

2 A. I am not sure.

3 Q. Would you say that you have the kind of memory
4 that would work this way: That the closer you are in time to
5 something you are being asked to remember, the more accurate
6 your memory is?

7 A. Yes.

8 Q. So here we are nearly two years out, and you have
9 a memory; right?

10 A. Yes.

11 Q. Here you are not quite four months out, and you
12 have a different memory; right?

13 MR. BUTNER: Objection. That misstates the
14 date of the interview, Mr. Sears.

15 MR. SEARS: I didn't hear the end of that,
16 Your Honor. I'm sorry.

17 THE COURT: Restate the question in terms of
18 the timing of the two events.

19 MR. SEARS: Let me break it down for you,
20 Jake.

21 Q. We are now a little more than 23 months down the
22 road from the day that Carol died; right?

23 A. Okay.

24 Q. It will be two years next month; right?

25 A. Right.

1 Q. So you have a memory here today that this
2 conversation took place the night of July 3rd. That is your
3 memory here today; right?

4 A. Yes.

5 Q. But on October 28, 2008, which was just a little
6 bit shy of four months after the events, you say something
7 different to the detective, what we just read. You tell the
8 detective, "I guess it turned up either that evening or the
9 next morning in Renee's car. That was pretty much all I
10 heard about the head sock."

11 That is what you told the detective not
12 quite four months after the event; right?

13 A. Yes.

14 Q. And do you think your memory is much sharper
15 today, 23 months later than it was four months after the
16 event?

17 A. I don't think so.

18 Q. You think your memory would have been better back
19 then?

20 A. Yes.

21 Q. So if you told the detective that it could have
22 been either that evening or the next morning, it could have
23 been the 3rd or the 4th; right?

24 A. Yes.

25 Q. When the second search that you told about was

1 being conducted, when you heard the noise and ran down to the
2 garage and the police were there, you saw Sergeant Huante;
3 right? The first person that questioned you, you saw him at
4 Steve's house; right?

5 A. Correct.

6 Q. And he had you and Steve and Char stay out of the
7 way of the people that were doing the search. That is what
8 he was doing; right?

9 A. He was questioning Charlotte and I about the head
10 sock.

11 Q. Before that, he had everybody sit at the dining
12 room table. "Everybody" being you and Steve and Char sit at
13 the dining room table; right?

14 A. Yes.

15 Q. While the search was going on; right?

16 A. For part of it, it is my understanding that Steve
17 was down at the bottom of the stairs.

18 Q. Steve was allowed to sit on the stairs. Did you
19 sit on the stairs at some point?

20 A. I don't remember.

21 Q. Do you remember that Sergeant Huante directed
22 Steve to sit on the stairs. That he could either sit at the
23 table or sit on the stairs; right?

24 A. I don't remember.

25 Q. He had Steve sit on the stairs so he could talk to

1 you and Charlotte about the head cover; right?

2 A. Yes.

3 Q. Neither you nor Charlotte were allowed to get up
4 and wander around the condo while the search was being
5 conducted; right?

6 A. Correct.

7 Q. You were told to sit in a particular place, and
8 Sergeant Huante was watching you; right?

9 A. Yes.

10 Q. And Steve was told to sit in a particular place.
11 First at the table and then on the stairs; right?

12 A. Yes.

13 Q. He wasn't allowed to wander around. You could see
14 where he was, and he was not wandering around watching the
15 police while they were searching; right?

16 A. Correct.

17 Q. He was sitting on the stairs; right?

18 A. Yes.

19 Q. He wasn't down in the garage. He was seated on
20 the stairs; right?

21 A. Yes.

22 Q. You told Mr. Butner you couldn't see whether the
23 door at the bottom of the stairs to the garage was open or
24 not; right?

25 A. Right.

1 Q. There is no question. You have a picture as you
2 sit here today. You can see Steve sitting on the stairs;
3 right?

4 A. Correct.

5 Q. That is where Sergeant Huante had put him; right?

6 A. Correct.

7 Q. And then when Sergeant Huante was done talking to
8 you and Charlotte about the head cover, Steve came back up
9 and sat at the table; right?

10 A. Yes.

11 Q. Was there a time when you and Charlotte and Steve
12 were all sitting on the stairs?

13 A. I don't remember.

14 Q. There was never a time when you were in the garage
15 while the search was being conducted; right?

16 A. Right.

17 Q. There was never a time when Charlotte was away
18 from you; right?

19 A. Right.

20 Q. There was never a time when you lost sight of
21 Steve; right?

22 A. Correct.

23 Q. He was always in your sight; right?

24 A. Correct.

25 Q. Until the police left; correct?

1 A. Correct.

2 Q. And you thought Sergeant Huante was harassing
3 Charlotte about this head cover; right?

4 A. It was the tone in his voice. He started to
5 elevate his voice and kept pressing us. Yes, I felt he was
6 harassing Charlotte.

7 Q. And it was pretty clear that neither you nor
8 Charlotte had any idea what he was talking about; right?

9 A. Correct.

10 Q. And he wouldn't give it up?

11 A. Correct.

12 Q. Talking about Steve's workout habits -- we are
13 going to jump around here -- but I get the impression that
14 you said that Steve worked out every day; right?

15 A. Yes.

16 Q. Pretty serious about it; right?

17 A. Yes.

18 Q. And as the summer moved on, and it was light later
19 in the evening and hot during the day, is it fair to say,
20 Jake, that Steve's workouts, if he was going to do longer
21 workouts, would be into the evening hours. That is when he
22 worked out?

23 A. Yes.

24 Q. Okay. And you said that Steve ran; right?

25 A. Correct.

1 Q. And he went to the fitness center; right?

2 A. Correct.

3 Q. And you knew he rode his bike. You just didn't
4 remember him riding it for a while; right?

5 A. Correct.

6 Q. And you weren't terribly concerned and really
7 didn't know, apparently, where he would ride his bike. Is
8 that fair to say?

9 A. Yes.

10 Q. When you were talking to Commander Mascher, and
11 you were talking about something about where Steve was, you
12 used the expression it was part of Steve's routine. Did you
13 really know what Steve's routine was?

14 A. The part of the routine I knew was just him
15 working out every day.

16 Q. That is about as much as you knew?

17 A. Right.

18 Q. It seemed pretty important to him; right?

19 A. Yes.

20 Q. Was it a source of conversation between you and
21 Charlotte about her dad being some kind of a workout addict?

22 A. I don't remember.

23 Q. You told Commander Mascher that you thought that
24 Steve went from his bike ride to his office. Do you remember
25 telling him that?

1 A. I do not.

2 Q. You knew -- your impression was that Steve went
3 from his bike ride to the fitness center; right?

4 A. Yes.

5 Q. The reason you know that is because that is where
6 you believe he was when you and Charlotte got the call from
7 him in Safeway?

8 A. Correct.

9 Q. Is that because of something you heard Charlotte
10 say? How is it that you got the idea that he was at the
11 fitness center? Could you hear her saying something like
12 that to her dad?

13 A. Yes. He was going to work out. So I assumed he
14 was at the workout center.

15 Q. Mr. Butner asked you a question about Steve's cell
16 phone batteries, and you said you had an idea that he kept
17 one at home and his office and in the car. Is that based on
18 something that somebody told you, or did you see the extra
19 cell phone batteries?

20 A. That was based on something that -- I had seen him
21 switch batteries at the office, and while he was on the phone
22 with Char in the car. He would have to switch batteries upon
23 occasion.

24 Q. Did you know he kept a cell phone battery in his
25 briefcase typically?

1 A. I did not.

2 Q. Did you know where he kept his briefcase most of
3 the time?

4 A. No.

5 Q. Did you know he had a briefcase?

6 A. I did.

7 Q. You just never looked at it?

8 A. Right.

9 Q. You didn't think that would be a good idea looking
10 in somebody else's briefcase?

11 A. I had no need to.

12 Q. You said you thought it was unusual for Steve not
13 to be able to be reached on his cell phone. Can you think of
14 a time when Charlotte tried to contact him when he was
15 working out on his cell phone?

16 A. I can't, no.

17 Q. As you sit here today, does it strike you as
18 unusual that Steve would not have his cell phone turned on
19 while he was riding his bike?

20 A. I'm sorry?

21 Q. Would you think, as you sit here today, that it
22 was unusual that Steve would not have had his cell phone with
23 him or turned on while he was out on a bike ride?

24 MR. BUTNER: Objection. Speculation.

25 THE COURT: Sustained.

1 BY MR. SEARS:

2 Q. Do you know whether Steve had his cell phone with
3 him when he was out that night on his bike ride?

4 A. I do not know.

5 Q. Was there a conversation that you either had with
6 Steve or you overheard where Steve was saying that the
7 battery in the cell phone had gone dead, and he put a new
8 battery in when he was at the fitness center?

9 MR. BUTNER: Objection. Hearsay.

10 MR. SEARS: I was asking about a question that
11 he either participated in or overheard, the statement of the
12 defendant.

13 THE COURT: Sustained.

14 BY MR. SEARS:

15 Q. Do you know anything about Steve's cell phone
16 battery that night?

17 A. I had heard that it was dead.

18 Q. You heard that from Steve?

19 A. Yes.

20 Q. Do you have any reason to doubt that?

21 A. No.

22 Q. Jumping around again. Going back to the second
23 search the day after Carol died, you said that Sergeant
24 Huante was talking about the head cover. Did you hear any of
25 the other police officers or detectives talking about the

1 head cover other than Huante?

2 A. I did not.

3 Q. You talked about the colors of the various cars,
4 and you thought that Renee's car was gold. Are you certain
5 about that?

6 A. Yes.

7 Q. And this was the car that Steve borrowed after
8 Carol was murdered. It was Renee's gold car?

9 A. Yes.

10 Q. You just don't remember what make or model it was?

11 A. I do not.

12 Q. It was just a gold passenger sedan?

13 A. Yes.

14 MR. SEARS: I don't have any other questions,
15 Your Honor. Thank you.

16 THE COURT: Redirect, Mr. Butner.

17 MR. BUTNER: Yes, Judge. Thank you.

18 REDIRECT EXAMINATION

19 BY MR. BUTNER:

20 Q. Let's go to when Sergeant Huante was questioning
21 you and Charlotte about the golf club head cover.

22 Where were you when this conversation
23 took place?

24 A. In the dining room.

25 Q. And Charlotte was there with you?

1 A. Yes.

2 Q. And where was Steve?

3 A. I believe he was downstairs.

4 Q. Could you see him from where you were at?

5 A. No. My attention was focused at Sergeant Huante.

6 Q. I understand, but you indicated that he was down
7 on the stairs; correct?

8 A. Correct.

9 Q. Just down the stairs from the dining room?

10 A. Towards the bottom.

11 Q. And Sergeant Huante -- you got upset because
12 Sergeant Huante was elevating his voice; right?

13 A. Correct.

14 Q. And the tone of his voice was offensive to you?

15 A. Correct.

16 Q. This is when he was talking to you and Charlotte;
17 right?

18 A. Yes.

19 Q. And Steve was just down the stairs from there?

20 A. Yes.

21 Q. Is there a door between where Steve was located
22 and where you and Sergeant Huante were having this
23 conversation?

24 A. There is not.

25 Q. Was Steve at a place where he could have overheard

1 this conversation?

2 A. Yes.

3 Q. And if I understood what you were saying, Huante
4 was insistent that you had some sort of knowledge about this
5 golf club sock; is that right?

6 A. That is correct.

7 Q. What did you say to him?

8 A. That we had no idea. Hadn't heard anything.
9 Hadn't seen anything.

10 Q. After the search was over, when was the first time
11 that you heard Mr. DeMocker say anything about the golf club
12 sock?

13 A. That night.

14 Q. Approximately what time?

15 A. After the detectives had left.

16 Q. Shortly thereafter?

17 A. Yes.

18 Q. What did Mr. DeMocker say at that time?

19 A. That the wind must of blown the head sock into
20 Renee's car.

21 Q. How did that statement strike you?

22 A. It was odd.

23 Q. Why did you think that was odd?

24 MR. SEARS: Relevance. Foundation.

25 Speculation.

1 THE COURT: Sustained.

2 BY MR. BUTNER:

3 Q. When you got on the phone with Steve, after
4 picking it up from when Charlotte dropped it --

5 A. On the 2nd?

6 Q. On the 2nd, out at the scene of the murder.

7 A. Okay.

8 Q. -- how long did that conversation last between you
9 and Mr. DeMocker?

10 A. It was under a minute. It was very brief.

11 Q. And you weren't in a position to see him at that
12 time; right?

13 A. Correct.

14 Q. Just from the sounds you heard on the phone, you
15 thought he was devastated?

16 A. Yes.

17 Q. Before you went out to the scene of the homicide,
18 did you discuss the possibility of Steve going out to Carol's
19 house?

20 A. We did.

21 Q. You indicated that you thought, if I understood
22 your earlier testimony, that you thought it might be
23 dangerous going out there; is that correct?

24 A. Yes.

25 Q. Did you tell Steve that you thought it might be

1 dangerous?

2 A. It was just kind of understood.

3 Q. And was it your idea that you and Charlotte go out
4 there, or was it Steve's?

5 A. I think it was mine.

6 Q. And did he agree that that was a good idea?

7 A. He didn't feel comfortable with it, but he agreed
8 with it.

9 Q. All of these times that you have been giving us in
10 terms of these various events, obviously you don't wear a
11 watch; right?

12 A. Correct.

13 Q. Are these your best estimates as to when these
14 various events occurred?

15 A. They are.

16 Q. You weren't pulling out your cell phone and
17 checking your phone during these things; were you?

18 A. I was not.

19 Q. When you went to the Safeway store that night, you
20 went down to the garage; right?

21 A. Correct.

22 Q. Got in Charlotte's car?

23 A. Correct.

24 Q. Did you see Mr. DeMocker's bicycle in the garage?

25 A. I did not.

1 Q. Was it gone?

2 A. Yes.

3 Q. And when you came back, was the bicycle back in
4 the garage at that time?

5 A. It was.

6 Q. When you got back from Safeway, and you went
7 upstairs with the stir fry; right?

8 A. Yes.

9 Q. Steve was already there; is that correct?

10 A. Yes.

11 Q. And that's when he came out of the shower with the
12 towel on?

13 A. Correct.

14 Q. Did he explain to you at that point in time that
15 that is when he got the flat tire?

16 A. No. I don't remember when that came up.

17 Q. Okay. Did he explain to you that he had received
18 a phone call at that point in time from Ruth Kennedy?

19 A. I don't remember.

20 Q. He came back in with his clothes on after getting
21 out of the shower; right?

22 A. Correct.

23 Q. And if I understood your earlier testimony, that
24 is when he left to go turn off the computer at work?

25 A. Correct.

1 Q. Had he mentioned anything at that point in time
2 about receiving a phone call from Ruth Kennedy?

3 A. No.

4 Q. Did he first mention receiving the phone call from
5 Ruth Kennedy when he came back from going to the office to
6 turn off the computer?

7 A. I think so, yes.

8 Q. Did he indicate to you at that point in time
9 whether he had spoken directly with Ruth Kennedy?

10 A. He did not.

11 Q. At some point in time that evening, did Steve tell
12 you that he spoke directly with Ruth Kennedy?

13 A. After dinner when he had made the phone call to
14 Ruth.

15 Q. Did he come back and tell you that he had spoken
16 with Ruth Kennedy directly at that point?

17 A. Yes.

18 Q. What did he tell you Ruth Kennedy told him at that
19 point in time?

20 MR. SEARS: Hearsay.

21 THE COURT: Sustained.

22 BY MR. BUTNER:

23 Q. Was that when you then had the discussion that you
24 needed -- or somebody needed to check on Carol?

25 A. Yes.

1 Q. That's when you volunteered to go with Charlotte
2 out to Bridle Path?

3 A. Correct.

4 MR. BUTNER: No further questions. Thank you.

5 THE COURT: Let's see counsel with regard to
6 jury questions. I see a couple.

7 (Whereupon, a discussion was held off the record.)

8 THE COURT: If you want to take a stretch,
9 please feel free.

10 (Whereupon, a discussion was held off the record.)

11 THE COURT: I am going to take a break. This
12 is taking too long.

13 (Whereupon, the jury exits the courtroom.)

14 (Whereupon, the following was held in chambers
15 outside the presence of the jury.)

16 THE COURT: This is a hearing in chambers,
17 outside the presence of the jury and outside the presence of
18 the defendant.

19 MR. SEARS: We waive Mr. DeMocker's presence,
20 Your Honor.

21 THE COURT: We have the witness, Mr. Janusek,
22 here with us in chambers.

23 Mr. Janusek, is that a correct
24 pronunciation?

25 THE WITNESS: Janusek, yes.

1 THE COURT: I had a question, but I think I
2 need to know what the answer is before I ask it, and I think
3 also to respect to some extent your privacy.

4 One of the questions posed by the jurors
5 is: Why did you and Charlotte break up? And I wanted to
6 make sure what the answer was and that it was not going to be
7 something too embarrassing to you or the process of the
8 trial, based on what your answer might be.

9 THE WITNESS: It is a little embarrassing. I
10 had made some mistakes and had cheated on Charlotte, and that
11 was my understanding --

12 THE COURT: I don't want to get into your
13 personal life and that sort of thing and embarrass you by
14 asking you that sort of question, so I didn't want to do that
15 out there.

16 Did it have anything to do with the case?
17 That is what is relevant is any impact of something that
18 might have to do with the case.

19 THE WITNESS: I really don't think so.

20 THE COURT: Other than the fact that she may
21 have been told by people that she wasn't to talk about the
22 case and that sort of thing?

23 THE WITNESS: Right.

24 THE COURT: I had that impression from
25 something that you said earlier. Was that part of your

1 understanding?

2 THE WITNESS: I don't understand.

3 THE COURT: That she wasn't to be talking to
4 you or anybody else about the case?

5 THE WITNESS: Yes.

6 THE COURT: That was your understanding --

7 THE WITNESS: Right.

8 THE COURT: -- in terms of it? So you tried
9 to carry on the relationship for a time afterwards of some
10 matter of weeks or months?

11 THE WITNESS: After we had broken up?

12 THE COURT: After the homicide of her mother.

13 THE WITNESS: Yes.

14 THE COURT: And when did you break up, if I
15 might ask that?

16 THE WITNESS: In January of 2009.

17 THE COURT: So the subsequent January. So
18 about six months later or so?

19 THE WITNESS: Yes.

20 THE COURT: Do you want to discuss this
21 further in front of Mr. Janusek as to whether that part of
22 his private life can stay private?

23 MR. SEARS: I don't have an interest -- the
24 concern is that this is a question on at least one juror's
25 mind, and I think there is a way to perhaps say it that it is

1 entirely truthful and honest, but not quite so involved and
2 just say we had a --

3 THE COURT: Personal disagreement.

4 MR. SEARS: -- personal disagreement or
5 falling out or something like that. It is really the next
6 parts of the question that are pertinent to the case, I
7 think.

8 THE COURT: Are you interested in asking the
9 questions about whether it related to the case or not?

10 MR. SEARS: I would.

11 THE COURT: Are you willing to answer whether
12 it related to the case or not?

13 THE WITNESS: I am not really sure whether it
14 was or not.

15 THE COURT: From your standpoint, did it
16 relate to the case?

17 THE WITNESS: No.

18 THE COURT: From her standpoint, you think
19 maybe it did?

20 THE WITNESS: Possibly.

21 THE COURT: I don't want you speculating on
22 what may be in somebody else's mind, unless there was
23 something she said to you about it being related to the case?

24 THE WITNESS: Us breaking up?

25 THE COURT: You breaking up. Is it your

1 impression at all that the breaking up had to do with the
2 case in any way?

3 THE WITNESS: Not really.

4 MR. SEARS: The juror is real specific. I
5 think the juror wanted to know if Charlotte or the family
6 were angry at you because of something you supposedly said.
7 Is that what you thought?

8 THE WITNESS: I never gained that impression.

9 THE COURT: If you are asked the question,
10 "did you say something that they didn't want to you say,"
11 what would your answer be?

12 THE WITNESS: I didn't -- I don't know.

13 THE COURT: "I don't know." Is that what your
14 answer would be?

15 MS. CHAPMAN: I didn't hear the answer. Was
16 that "I don't know"?

17 THE WITNESS: Could you repeat the question.

18 THE COURT: They are asking specifically, did
19 you say something that they did not want you to say?

20 THE WITNESS: No.

21 THE COURT: That is how would you answer it?

22 THE WITNESS: Yes.

23 THE COURT: So really it is what you told me
24 originally, which is not something I particularly want to get
25 into. It was personal.

1 THE WITNESS: Yes.

2 MR. BUTNER: I don't know that that is going
3 to work for the jurors. You know, I mean, personal.

4 THE COURT: You think they need to know it was
5 some allegation of his cheating on her?

6 MR. BUTNER: I don't think they need to know
7 that. But I have had this kind of question asked in a case,
8 and when you give that, well, it is personal, then they go
9 well, what is it? What is personal about it? You know, it
10 really does get them going on that kind of thing. It is a
11 weird deal.

12 THE COURT: Do you want to excuse Mr. Janusek
13 at this point?

14 MR. SEARS: Is there another part of the
15 question we haven't gotten to?

16 THE COURT: Well, the whole question is: Why
17 did you and Charlotte break up? He told us what his belief
18 is. Next says, did you say something they didn't want you to
19 say? He told us what the answer to that would have been.
20 Did it have anything to do with the case, question mark. And
21 then it says, or personal. So if we ask --

22 MR. SEARS: It might be -- this juror might be
23 okay if you said it was personal. It had nothing to do with
24 the case, and there was no suggestion that the relationship
25 was over because I had done or said something that they

1 didn't like. Is that true?

2 THE WITNESS: Yes.

3 MR. SEARS: I would like to have him answer it
4 that way. And I understand what you are saying about jurors
5 wanting more information, but that juror said "or personal."

6 MR. BUTNER: If he says, no, it was personal
7 and had nothing to do with the case, I think that will be
8 okay and lay the matter to rest.

9 THE COURT: If I ask you, did it have anything
10 to do with the case or was it personal, you would respond
11 how?

12 THE WITNESS: It was personal and was not
13 related to the case.

14 MR. SEARS: I would like to have an answer to
15 the specific question about did you say something they didn't
16 like, and the answer is no. You would have known --

17 THE COURT: You guys can do follow-up on it.
18 Please try to respect his privacy.

19 MR. SEARS: Absolutely. I think we can excuse
20 Jake on this one.

21 Thanks, Jake.

22 THE COURT: Okay. So you didn't have any
23 problem with when you went to the pool -- did you go to the
24 pool after the text messaging between mother and Charlotte?
25 You are okay with that one?

1 MR. SEARS: Yeah.

2 THE COURT: You are okay with that one.

3 Question: Did Steve tell you of his flat
4 tire and his ride on the sandy part of the trail on Granite
5 Mountain that night at dinner when you commented on his
6 injuries or several days later? I guess, a clarification
7 question.

8 MR. SEARS: I think he answered that.

9 THE COURT: I think he answered it, but let
10 him clarify that just to make sure.

11 This one relates to that one. Did you or
12 Charlotte sign in at the fitness center or the pool entrance?
13 Was Steve DeMocker's hair wet when you first saw him in the
14 towel?

15 MR. HAMMOND: Circumstantial evidence.

16 MR. SEARS: Was there a wet footprint on the
17 floor?

18 MR. BUTNER: I will never live it down. I
19 knew it was coming.

20 THE COURT: If I am still alive at your
21 eulogy, I am sure someone will mention it.

22 MR. SEARS: Instead of a picture of you next
23 to the casket, there will be a wet towel.

24 THE COURT: Wet footprints on the little
25 cards.

1 What time frame did the Sheriff's office
2 give permission to return to Alpine Meadows on July 3rd?

3 MR. SEARS: I doubt he knows.

4 THE COURT: Do you want me to ask it that way?
5 "If you know."

6 MR. SEARS: Yeah.

7 THE COURT: How many stairs are there down to
8 the garage from the living room area?

9 MR. BUTNER: How many stairs are there?

10 THE COURT: "If you know." Is that okay?

11 MR. SEARS: Sure.

12 MR. BUTNER: Sure.

13 THE COURT: That is all of them.

14 (Whereupon, the jury enters the courtroom.)

15 (Whereupon, the following was held in
16 open court in front of the jury.)

17 THE COURT: Be seated. Thank you.

18 Record reflects the presence of the jury,
19 the defendant, all counsel.

20 QUESTIONS BY THE JURY

21 THE COURT: Mr. Janusek, in no particular
22 order, I have a number of questions from the members of the
23 jury.

24 When, in terms of time frame, did the
25 Sheriff's office give permission to return to Alpine Meadows

1 on July 3rd, 2008, if you know?

2 THE WITNESS: Approximately 4:00 p.m.

3 THE COURT: Question: How many stairs are
4 there down to the garage from the living area, presumably
5 again at the townhouse, Alpine Meadows, if you know?

6 THE WITNESS: I am not sure. One flight.

7 THE COURT: Did you or Charlotte sign in at
8 the fitness center or at the pool entrance?

9 THE WITNESS: We did not.

10 THE COURT: Question: Was Steve's DeMocker's
11 hair wet when you first saw him in the towel?

12 THE WITNESS: I can't remember.

13 THE COURT: Question: Did Steve ever tell you
14 directly that he was thinking of or going to flee?

15 THE WITNESS: No.

16 THE COURT: Question: Is there a time stamp
17 for getting into the pool area?

18 THE WITNESS: Not to my knowledge.

19 THE COURT: Is there a -- Question: Is there
20 a time stamp for Charlotte going back in the gate after the
21 pool?

22 THE WITNESS: I don't understand the question.

23 THE COURT: Well, I don't know that I can help
24 you with that.

25 Question: How sure were you that it was

1 Steve that you saw at the intersection, presumably meaning
2 Gail Gardner and Iron Springs?

3 THE WITNESS: I am not sure.

4 THE COURT: Question: What was Charlotte's
5 response when you said you believe you saw her father at the
6 intersection?

7 THE WITNESS: She stated that she did not
8 think it was Steve.

9 THE COURT: All right. Question: With regard
10 to you and Charlotte breaking up, did you say something that
11 they didn't want you to say?

12 THE WITNESS: No.

13 THE COURT: Did the break up have anything to
14 do with the case or was it personal?

15 THE WITNESS: It was personal and not related
16 to the case.

17 THE COURT: Question: Did Steve tell you of
18 his flat tire and his ride on the sandy part of the trail on
19 Granite Mountain that night at dinner when you commented on
20 his injuries or several days later?

21 THE WITNESS: I am not sure.

22 THE COURT: Question: When you went or -- did
23 you go to the pool after the text messaging between mother
24 and Charlotte?

25 THE WITNESS: I think it was before.

1 THE COURT: Those are the questions from the
2 members of the jury. Any other questions from the jury? I
3 don't see any.

4 I do allow follow-up to the questions
5 asked by the jury, so Mr. Butner, you may do any follow-up
6 questions.

7 FOLLOW-UP QUESTIONS.

8 MR. BUTNER: That night at the dinner table,
9 you saw Steve come out of the shower with the towel on;
10 correct?

11 THE WITNESS: Correct.

12 MR. BUTNER: And you noticed the cuts on him?

13 THE WITNESS: Correct.

14 MR. BUTNER: Did you ask him what happened?

15 THE WITNESS: I don't remember asking him.

16 MR. BUTNER: Did he just volunteer what
17 happened to him at that point?

18 THE WITNESS: Yes.

19 MR. BUTNER: And if I understood your earlier
20 testimony, was that when he said that they were just
21 scratches from riding on the trail?

22 THE WITNESS: Correct.

23 MR. BUTNER: Did he tell you anything at that
24 point in time about getting a flat tire?

25 THE WITNESS: I don't remember.

1 MR. BUTNER: At the dinner table that night,
2 did you discuss him getting a flat tire on the trail?

3 THE WITNESS: Yes.

4 MR. BUTNER: Did he tell you what trail he was
5 riding on that night when he got a flat tire?

6 THE WITNESS: I don't remember.

7 MR. BUTNER: You don't remember him saying
8 what trail?

9 THE WITNESS: No.

10 MR. BUTNER: But you do remember him saying at
11 the dinner table that he got the flat tire?

12 THE WITNESS: Yes.

13 MR. BUTNER: Thank you.

14 THE COURT: Mr. Sears, any follow-up
15 questions?

16 MR. SEARS: I do.

17 FOLLOW-UP QUESTIONS

18 MR. SEARS: Jake, talking about this flight of
19 stairs, if I understand what you are saying, there is one
20 flight of stairs when you go from the garage upstairs, but it
21 has a number of steps on it; right?

22 THE WITNESS: Correct.

23 MR. SEARS: You just don't know how many steps
24 in that flight?

25 THE WITNESS: Correct.

1 MR. SEARS: More than one and less than 500?

2 THE WITNESS: Yes.

3 MR. SEARS: And I think this question about
4 the time stamp on the gate may have something to do with what
5 you and I talked about, that when you go through the gate,
6 there is an arm that lifts up when you go into Alpine Meadows
7 in that community?

8 THE WITNESS: Okay.

9 MR. SEARS: It is a gated community?

10 THE WITNESS: Correct.

11 MR. SEARS: Do you know whether when that gate
12 comes up it creates a record of what time the gate was
13 opened?

14 THE WITNESS: Going into Alpine Meadows or the
15 fitness center?

16 MR. SEARS: Alpine Meadows.

17 THE WITNESS: It does.

18 MR. SEARS: How do you know that?

19 THE WITNESS: I have learned from the
20 detectives.

21 MR. SEARS: Afterwards?

22 THE WITNESS: Correct.

23 MR. SEARS: At the time on July 2nd as you
24 were going in there with Charlotte, you had no idea that
25 every time the gate went up, it made a record someplace?

1 THE WITNESS: Correct.

2 MR. SEARS: Then you told us you don't think
3 there is a record made when you go out of Alpine Meadows.
4 You just pull out of the gate; right?

5 THE WITNESS: Correct.

6 MR. SEARS: The fitness center, there is just
7 a sign-in sheet; right?

8 THE WITNESS: Correct.

9 MR. SEARS: You can get into the swimming pool
10 by going up to the stairs into the building where the workout
11 center is?

12 THE WITNESS: Through the fitness center.

13 MR. SEARS: Have you ever done that, going to
14 the pool that way?

15 THE WITNESS: No.

16 MR. SEARS: Have you ever been in there?

17 THE WITNESS: Yes.

18 MR. SEARS: Is there a sign-in sheet there?

19 THE WITNESS: I don't recall.

20 MR. SEARS: Is there another sign-in sheet at
21 the pool?

22 THE WITNESS: I believe so.

23 MR. SEARS: When you were there, the times you
24 were in the pool, was there ever anybody that seemed to be
25 working for the club there to make sure everybody signed in?

1 THE WITNESS: I think so, yes.

2 MR. SEARS: How about on July 2nd? Apparently
3 you and Char didn't sign in; right?

4 THE WITNESS: Correct.

5 MR. SEARS: Is it likely there was not anybody
6 there when you were at the pool?

7 THE WITNESS: Yes.

8 MR. SEARS: But you have signed in before?

9 THE WITNESS: We have at times, yes.

10 MR. SEARS: Did Charlotte sign you in as a
11 guest?

12 THE WITNESS: I am not sure.

13 MR. SEARS: You didn't sign in because you
14 weren't a member; right?

15 THE WITNESS: Correct.

16 MR. SEARS: I have no other questions. Thank
17 you.

18 THE COURT: Anything further, Mr. Butner?

19 MR. BUTNER: No. Nothing further. Thank you,
20 Judge.

21 THE COURT: Can Mr. Janusek step down and be
22 excused from further participation, or do you want him to
23 remain under his subpoena, subject to recall?

24 MR. BUTNER: I believe he can be excused,
25 Judge.

1 THE COURT: Mr. Sears.

2 MR. HAMMOND: May we have a moment?

3 THE COURT: You may, Mr. Hammond.

4 (Whereupon, a discussion was held off the record.)

5 MR. SEARS: Your Honor, I think we ask that
6 Mr. Janusek be kept in the subpoena. We have no objection to
7 being excused today, but subject to recall.

8 THE COURT: What that means, Mr. Janusek, is
9 there is a possibility that you could get called back to
10 testify further in the case. As such, you still remain under
11 the rule excluding witnesses. If you had been excused, you
12 would have been allowed to remain in the courtroom and watch
13 the further proceedings, but since you are subject to recall,
14 you are not allowed to stay in the courtroom, and you are not
15 allowed to discuss your testimony with anybody else, except
16 the lawyers involved in the case, and then only when no other
17 witness is present. If you are going to be recalled, the
18 lawyers will have to let you know that. I don't know about
19 the strength of the possibility of that, but they will let
20 you know.

21 THE WITNESS: Okay.

22 THE COURT: You may stand down.

23 And since it is five to 5:00, I am not
24 going to start a new witness at this time, obviously.

25 Please remember the admonition. Take

1 care of yourselves over the evening hours, and see you back
2 here tomorrow at nine o'clock.

3 (Whereupon, the jury exits the courtroom.)

4 (Whereupon, at 4:53 p.m. the case was adjourned
5 to resume at 9:00 on June 9, 2010.)

6 ***oOo***

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

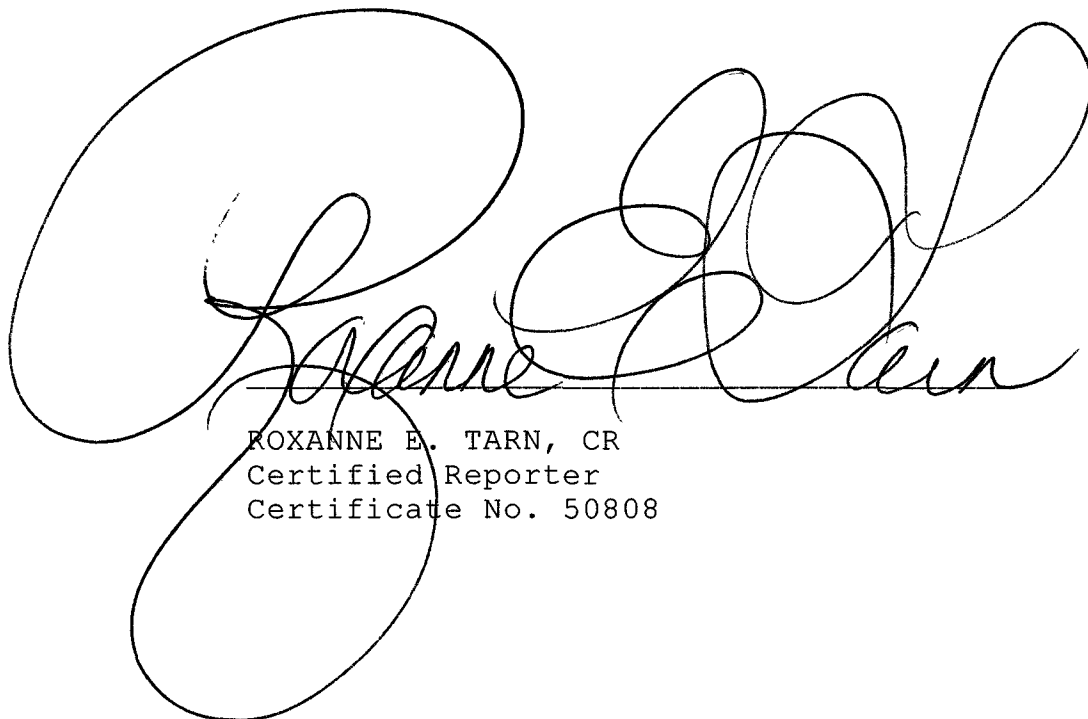
24

25

C E R T I F I C A T E

I, ROXANNE E. TARN, CR, a Certified Reporter
in the State of Arizona, do hereby certify that the foregoing
pages 1 - 259 constitute a full, true, and accurate
transcript of the proceedings had in the foregoing matter,
all done to the best of my skill and ability.

SIGNED and dated this 5th day of July, 2010.



ROXANNE E. TARN, CR
Certified Reporter
Certificate No. 50808